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TWENTY-FIRST ANNUAL REPORT

1985-86

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ONTARIO LAW REFORM COMMISSION

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Ontario



Ministry of the
Attorney
General

TWENTY-FIRST ANNUAL REPORT

1985-86

ONTARIO LAW REFORM COMMISSION



**Ministry of the
Attorney
General**

The Ontario Law Reform Commission was established on May 8, 1964 by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

JAMES R. BREITHAAPT, CSTJ, CD, QC, MA, LLB,
Chairman

H. ALLAN LEAL, OC, QC, LLM, LLD, DCL,
Vice Chairman

HONOURABLE RICHARD A. BELL, PC, QC, LLD

WILLIAM R. POOLE, QC

BARRY A. PERCIVAL, QC (to January 22, 1986)

EARL A. CHERNIAK, QC (from March 6, 1986)

J. ROBERT S. PRICHARD, MBA, LLM (from March 6, 1986)

MARGARET A. ROSS, BA (Hon.), LLB (from March 6, 1986)

M. Patricia Richardson, MA, LLB, is Counsel to the Commission. The Secretary to the Commission is Diane L. Murdoch. The Commission's office is located on the Fifteenth Floor at 18 King Street East, Toronto, Ontario, Canada M5C 1C5.

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Ontario
Law Reform
Commission

To The Honourable Ian Scott, QC
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Twenty-First Annual Report of the Ontario Law Reform Commission, for the period April 1, 1985 to March 31, 1986.

INTRODUCTION

This is the Twenty-First Annual Report of the Ontario Law Reform Commission, which reports for the period from April 1, 1985 to March 31, 1986. The major portion of the year has been devoted to preparing final Reports on a number of projects that are now substantially complete. In December, 1985, the Commission received a Reference from the Attorney General on Political Activity by Crown Employees. In addition, we have initiated two projects, which will consider Compensation for Personal Injury and Death, and the Liability of the Crown.

On June 9, 1985, the members and staff of the Commission mourned the death of Lachlan R. MacTavish, Esq., QC, who served us for fifteen years as a legislative draftsman. A testimonial to him was placed in our Minutes, and a copy was sent to his widow. The testimonial appears as Appendix A to this Report.

On September 23, 1985, more than one hundred of the friends, colleagues and associates of the Honourable James C. McRuer, OC, LL.D., DCL, gathered in Convocation Hall at Osgoode Hall for the unveiling of his portrait in bronze, which was created by Kenneth Jarvis, Esq., QC, RCA. Mr. McRuer, a former Chief Justice of the High Court of Ontario, was the first Chairman of the Commission, the Vice Chairman until 1977, and a Member of the Commission until 1982. The event was the first public occasion attended by Ontario's new Lieutenant Governor, the Honourable Lincoln Alexander, PC, QC. Guest speakers were the Honourable Ian G. Scott, QC, Attorney General for Ontario, the Honourable William Howland, Chief Justice of Ontario, and Pierre Genest, Esq., QC, the Treasurer of the Law Society of Upper Canada. Mr. McRuer spoke with great feeling in reply and thanked each one present for the honour done to him.

We were all deeply saddened just two weeks later by the death of Mr. McRuer, on October 6, 1985. The Commission's debt to Mr. McRuer cannot be overestimated. The sentiments of the Commission on his death are more fully expressed in a testimonial, which was placed in the Minutes of our October meeting, and which is attached to this Report as Appendix B.

On January 22, 1986, Barry A. Percival, Esq., QC, retired from the Ontario Law Reform Commission on the completion of his second three year term. The Commission's appreciation of the contribution of Mr. Percival is recorded in the Minutes of its February, 1986 meeting. An extract from those Minutes is attached to this Report as Appendix C.

On March 6, 1986, three new Commissioners were appointed by Order of the Lieutenant Governor in Council. They are Earl A. Cherniak, Esq., QC, of London; Dean J. Robert S. Prichard of the Faculty of Law, University of Toronto; and Mrs. Margaret A. Ross of Ottawa.

On June 30, 1986, the Honourable Richard A. Bell, PC, QC, LLD, and William R. Poole, Esq., QC, will retire from the Commission after exemplary service since their appointments on November 12, 1964.

As in the past, the Commission has continued to receive suggestions for additions to its programme from members of the judiciary, the legal profession and the public. The Commission appreciates this interest in its work, and wishes to extend its thanks to all those who have taken the time to assist it in this way.

THE PROGRAMME: REFERRED MATTERS

Section 2(1)(d) of the *Ontario Law Reform Commission Act* requires the Commission to inquire into and consider any matter relating to any subject referred to it by the Attorney General. During the past year, one new project, Political Activity by Crown Employees, was referred to the Commission. The Commission has already reported with respect to all other References it has received.

PROJECTS IN PROCESS

Political Activity by Crown Employees

On December 16, 1985, the Commission received a Reference to inquire into and report on the law relating to political activity by Crown employees. The following excerpt from the Letter of Reference contains the terms of reference:

In accordance with clause 2(1)(d) of the *Ontario Law Reform Commission Act*, I am now pleased to refer to the Commission for its consideration and report, to be completed by next July 1, the following issues in respect of the ability of Crown employees to speak out on public issues or take part in political activity.

1. What restrictions on activities by Crown employees are required to ensure their independence and impartiality.
2. Whether and to what extent the existing law and practices governing Crown employees restrict their activities beyond the extent necessary to ensure the existence and appearance of independence and impartiality.
3. Whether and to what extent changes to existing law and practices governing activities by Crown employees are necessary or desirable having regard to the Canadian Charter of Rights and Freedoms and the laws and practices of other comparable jurisdictions.
4. Whether and to what extent changes should be made in the oath of secrecy or the law relating to that oath in conjunction with any changes recommended.
5. Whether and to what extent the common law in relation to an employee's duty of loyalty and confidentiality bears on the above issues.

In considering these issues, I would ask that you bear in mind that different considerations may apply to different groups of Crown employees, such as civil servants and public servants, and to different classifications and job descriptions.

In view of the Attorney General's request that the Commission report by July 1, 1986, work on the project commenced forthwith. An Announcement, setting forth the terms of reference and inviting the submission of briefs, was placed in a large number of newspapers throughout the Province, and Public Hearings were held in Toronto, Ottawa and North Bay. The Commission was most fortunate to secure the services of Kenneth P. Swan, Esq., of the Ontario Bar, as Project Consultant. In addition, Kenneth Kernaghan, Professor of Politics and Public Administration, Brock University, has been retained to assist the Commission. A Research Design has been prepared by Mr. Swan and approved by the Commission, and research is well underway.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission may inquire into and consider any matter relating to reform of the law. During the year under review, the Commission initiated two projects, dealing with Compensation for Personal Injury and Death, and Liability of the Crown.

PROJECTS IN PROCESS

1. *Administration of Estates of Deceased Persons*

The objective of this project is a new *Administration of Estates Act*, which would bring together and revise relevant portions of the *Trustee Act*, the *Estates Administration Act*, and the provisions governing practice under the *Surrogate Courts Act* and Rules. The new Act would also codify and revise a number of common law doctrines that now govern estate administration. During the past year, certain residual issues were resolved, and work continued on the writing of the Commission's final Report.

The Project Director is Professor George W. Alexandrowicz of the Faculty of Law, Queen's University. During the project, the Commission has benefited from the assistance of an Advisory Committee of experts in estate administration, constituted under the chairmanship of Malcolm Archibald, Esq., QC, of the Ontario Bar.

2. *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

The Commission's study of the question whether the Hague Convention Concerning the International Administration of the Estates of Deceased Persons should be given effect in Ontario began some years ago as a separate project. Since this matter is closely related to the Commission's Project on Administration of Estates of Deceased Persons, however, the Commission decided to examine the Convention as part of that

project, in the context of a general consideration of the estates of foreign decedents. The International Convention will be dealt with in the Commission's *Report on Administration of Estates of Deceased Persons*.

3. *Basic Principles of Land Law*

As indicated in our Annual Report a year ago, work is progressing on the writing of the Commission's final *Report on Basic Principles of Land Law*. Two substantial chapters have been submitted to the Commission for approval. Although the work has been interrupted from time to time to accommodate the performance of more urgent tasks, it is anticipated that this project will be completed in the coming fiscal year.

4. *The Law of Mortgages*

The Law of Mortgages Project is concerned with three main topics: (1) proper disclosure to borrowers and potential borrowers; (2) the mortgage as an ongoing relationship; and (3) mortgage remedies. The project has been conducted in three stages. The first stage involved consultation by the Project Director, Barry J. Reiter, Esq., of the Ontario Bar, with representatives of various interest groups in the mortgages area in order to identify issues requiring remedial legislation. During the next stage, nine research papers were prepared by a Research Team and considered by an Advisory Committee comprising representatives of the legal profession, consumer groups, and institutional lenders. The Commission subsequently considered and gave tentative approval to a Research Report prepared by the Project Director and outlining the general policies upon which reform proposals would be based.

The third stage of the project involved the preparation of a further set of ten research papers, which elaborated upon and refined the general reform proposals of the second stage. Following extensive consultation with the Research Team and the Advisory Board, a Director's Report was prepared, which, together with the second set of research reports, was given detailed consideration by the Commission in April, 1984.

In April, 1985, a Draft Act was prepared and presented to the Advisory Board for its views. A revised version of that Act, as well as several residual issues, were considered by the Commission in May and September, 1985.

The Commission's final Report is now substantially complete, and we are awaiting the assistance of a legislative draftsman in order to finalize the Draft Act.

5. *Time Sharing*

This project involves an examination of all aspects of the present law governing time sharing in Ontario and other jurisdictions for the purpose of determining the need for enabling and regulatory legislation in the Province.

The research for the project is complete and has been reviewed by an Advisory Committee comprising members of the legal profession, government officials, and other knowledgeable, interested parties. The Commission has taken all policy decisions arising out of the research, and the writing of the final Report has commenced.

Unfortunately, work on the project has had to be deferred, due to a change in the membership of our legal staff and receipt from the Attorney General of the Reference on Political Activity by Crown Employees. Upon completion of the Reference, we intend to turn our attention once again to preparation of the final Report.

6. *Law of Contract Amendment*

The Law of Contract Amendment Project has involved the preparation of some seventeen research papers dealing with issues of contract formation and with other substantive and remedial issues. During the past year the editing of the final *Report on Amendment of the Law of Contract* was substantially completed, and we are now awaiting assistance in the preparation of a Draft Act.

As in the past, we continue to be most ably assisted by the joint Project Directors, Professor Jacob S. Ziegel and Professor Stephen M. Waddams, both of the Faculty of Law, University of Toronto.

7. *The Law of Standing*

The Law of Standing Project is concerned with the question whether the law governing the right of a private individual to commence an action in respect of public rights should be broadened.

Research for the project has been carried out, initially by Andrew Roman, Esq., of the Ontario Bar, and latterly under the direction of Professor W. A. Bogart, of the Faculty of Law, University of Windsor. The research is now complete and has been considered by the Research Team. It is expected that the Project Director's Research Report, containing concrete proposals for reform of the law, will be placed before the Commission for consideration in the early summer.

8. *Contribution Among Wrongdoers*

As indicated in previous Annual Reports, this project deals with the allocation of responsibility for loss or damage occasioned by the conduct of two or more persons, and with the law relating to contributory negligence, which also involves the apportionment of loss.

Nine research papers have been prepared and considered by the Commission during the course of the project, which is being directed by Professor John M. Evans, Associate Dean of Osgoode Hall Law School, York University. In addition, the Commission has received from Professor Evans a draft Report and draft legislation.

Unfortunately, due to other commitments, it has not been possible during the past year to prepare the final Report and Draft Act for submission to the Attorney General. Upon completion of the Reference on Political Activity by Crown Employees, and submission of our Reports relating to the law of contracts and the law of mortgages, we intend to devote our energies to the completion of this important project during the coming fiscal year.

9. *Land Held Subject to French Title*

This project is being directed by R. E. Priddle, Esq., QC, former Director of the Legal and Survey Standards Branch, Ministry of Consumer and Commercial Relations. The project is concerned with conveying problems that arise in connection with land, including land held subject to French title, in respect of which there is no Crown patent.

During the past year, the Project Director prepared a working paper, which will be considered by the Commission in the near future.

10. *Wrongful Life, Wrongful Birth and Related Actions*

Initially, the Commission's study of so-called wrongful life, wrongful birth, wrongful conception or pregnancy, and dissatisfied life claims took place in the context of its Project on Human Artificial Reproduction and Related Matters, completed in March, 1985. Because such actions may arise in circumstances other than those involving the use of artificial conception technologies, however, a separate project was constituted, and a preliminary working paper was prepared by a member of the Commission's internal legal staff. Subsequently, further research was deferred pending a re-evaluation of the Commission's commitment to the project. No further decision has been taken.

11. *Remedies for Wrongful Interference with Goods*

This project examines recaption of chattels, the specific relief remedies of replevin and detinue, and damages remedies, such as trespass, conversion and interference with a reversionary interest.

The project is being directed by joint Project Directors, Professor George R. Stewart, of the Faculty of Law, University of Windsor, and Professor Ralph L. Simmonds, Associate Dean of the Faculty of Law, McGill University.

All stages of the project are complete, and the Commission has received a draft Report and draft legislation from the Project Directors. Unfortunately, because of other priorities, we have been unable to commence preparation of the final Report and Draft Bill. Nevertheless, with the projected completion of several projects in the coming months, we hope to be able to turn our attention to the project once again and to complete it within the current fiscal year.

12. *Compensation for Personal Injury and Death*

In November, 1985, the Commission added to its programme a project on Compensation for Personal Injury and Death. Professor Stephen M. Waddams, of the Faculty of Law, University of Toronto, has been appointed Project Director.

It is anticipated that the project will proceed over approximately two years. The topics to be examined include the following: pre-trial losses; non-pecuniary loss, including compensation for loss of guidance, care and companionship under the *Family Law Act, 1986*, compensation for mental distress, and monetary limits on non-pecuniary loss; loss of future earning capacity in the case of injury to or death of wage earners and non-wage earners; future care costs; collateral benefits; exemplary damages; pre-judgment interest; income tax considerations; and periodic payments and structured settlements.

A Notice inviting submissions from persons interested in the operation of this area of the law has been published. A Research Team has been appointed, and research will be carried out over the summer months. Subsequently the research will be evaluated by an Advisory Board, which will include members of the judiciary, the legal profession and government, and representatives of the insurance industry.

13. *Liability of the Crown*

As the result of a suggestion from a member of the profession, the Commission has decided to undertake a project dealing with liability of the Crown. Professor Peter W. Hogg, of the Faculty of Law, Osgoode Hall Law School, York University, has agreed to act as Project Director, and a research design, prepared by Professor Hogg, has been approved by the Commission.

The project is intended to extend over a two year period, and will examine the legal liability of the Crown, with a view to simplifying the law, bringing it into conformity with the *Canadian Charter of Rights and Freedoms*, and making it fairer to both Crown and subject. The main

focus of the project will be the *Proceedings Against the Crown Act*, which provides the existing statutory framework for proceedings against the Crown in right of Ontario, dealing with both substantive and procedural law.

Research on the project will commence in May, 1986, and will address, in particular, the following topics: the history and theory of Crown liability; the remedies available against the Crown, including the procedure for obtaining and enforcing those remedies, and the nature of and justification for special rules or immunities applicable to the Crown; the doctrine of Crown privilege; the liability of the Crown in tort and in contract; the extent to which the Crown is bound by the law of estoppel; and the extent to which the Crown is, and should be, bound by statute. Thereafter, the research generated by the project will be reviewed by an Advisory Board of experts.

FUTURE PROGRAMME

The importance attached by the Commission to the timely completion of the Reference on Political Activity by Crown Employees has necessitated the temporary suspension of work on a number of projects scheduled for submission to the Attorney General during the period under review, particularly the Law of Mortgages and Law of Contract Amendment projects. The Commission will continue to devote the majority of its resources to completion of the Reference by July 1, 1986, as requested by the Minister. Thereafter, priority will be accorded to publication of the several Reports that are in the final stages of preparation.

As projects are completed, projects that have been deferred will be reactivated and new topics will be considered for study. As indicated, the Commission is always open to suggestions concerning areas of the law that require reform.

GENERAL ACTIVITIES

The list of the activities of the Chairman appears as Appendix D to this Report. Appendix E lists those who have visited the Commission during the past year.

In addition to visitors to our office during the year, the Chairman was pleased to meet with members of the Kenya Law Reform Commission, who were visiting Washington, D.C., and Ottawa in August, 1985. Instead of coming to Toronto as they have planned, the Chairman arranged for them to visit Halifax, Nova Scotia, during the meeting of the Uniform Law Conference of Canada. The members of the Kenya Commission also attended the annual meeting of the Law Reform Conference of Canada, where they met with members of all the provincial law reform agencies, as well as with members of the Law Reform Commission of Canada. The members attending from Kenya were the Honourable Mr. Justice C.H.E.

Miller, EBS, Chairman, and three Commissioners, Madame Justice E. Owuor, G. K. Waruhiu, Esq., and J. A. Couldrey, Esq. They were accompanied by their Secretary, E. O. Abang, Esq.

Also attending the meeting of the Law Reform Conference of Canada held in Halifax, Nova Scotia on August 17, 1985, was M. A. Springman, Esq., Senior Legal Research Officer to the Commission.

Mr. Springman spoke to the Annual Meeting of the Ontario Association of Sheriffs and Court Registrars on September 14, 1985. On October 15, 1985, he was a panelist at a meeting of the Health Law Section, Canadian Bar Association-Ontario, on the topic "Production or Reproduction". On February 19, 1986 he and Larry Fox, Esq., of our legal staff, participated in a conference of the Southern Ontario *In Vitro* Fertilization Group, held at the Department of Obstetrics and Gynecology at McMaster University, in Hamilton.

ACKNOWLEDGMENTS

Attached to this Report are seven Appendices relating to the activities and staff of the Commission and to events of importance during the past year.

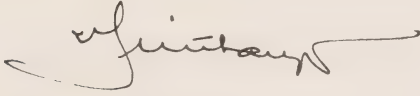
Appendices A and B record the sentiments of the Commission upon the passing of L. R. MacTavish, Esq., QC, and the Honourable J. C. McRuer, OC, LLD, DCL. Appendix C relates to a change in the membership of the Commission during the year.

Appendix D deals with the activities of the Chairman during the period under review. Appendix E lists the visitors to the Commission during the year. Appendix F sets out a list of Reports prepared and submitted by the Commission since its inception in 1964, together with a table indicating the extent to which legislation concerning our proposals has been enacted.

Appendix G contains a list of the officers and permanent staff of the Commission. The Commission regrets the loss during the past year of Ms. Ann M. Merritt, Legal Research Officer, who left the Commission to join the Policy Development Division of the Ministry of the Attorney General. To Ms. Merritt we wish to express our appreciation for her contribution to our work and our wishes for success in the future. To J. Jody Morrison, Esq., who joined the Commission as a member of the legal staff, we extend a sincere welcome. We also wish to thank our Administrative Officer, Mrs. Diane Murdoch, and the administrative staff for their cooperation and efforts on behalf of the Commission during the past year.

May we also express our sincere thanks and appreciation to you, Mr. Attorney, and to the officers of your Ministry, for the interest and assistance afforded the Commission in its endeavours.

All of which is respectfully submitted.



James R. Breithaupt
Chairman



H. Allan Leal
Vice Chairman



Richard A. Bell
Commissioner



William R. Poole
Commissioner



Earl A. Cherniak
Commissioner



J. Robert S. Prichard
Commissioner



Margaret A. Ross
Commissioner

March 31, 1985

APPENDIX A

TESTIMONIAL TO LACHLAN R. (DOUK) MacTAVISH, QC

Extract from the Minutes of the Ontario Law Reform Commission, November 4, 1985

The Commission agreed to approve the following tribute to Mr. MacTavish, which was prepared by Dr. Leal:

Lachlan Randolph (Douk) MacTavish died on Sunday, June 9, 1985 in his 81st year. We mourn his death and give thanks for a life and friendship generously shared.

Lachlan MacTavish was an accomplished lawyer and an outstanding legal draftsman. He served from 1947 to 1970 as senior legislative draftsman for the Province of Ontario. The excellence of form and the ready accessibility in current terms of the Revised Statutes of Ontario are in no small measure attributable to his great talents and abundant energy.

After his formal retirement, he consented to place his broad experience and many skills at the disposal of the Ontario Law Reform Commission and the many draft bills submitted as part of the Commission reports bear the stamp of his genius. He was a substantial contributor to the work of the Commission.

He was also a dedicated and loyal supporter of the work of the Uniform Law Conference of Canada, as a member, as President for two terms in 1953 and 1954 and as permanent Executive Secretary from 1973 to 1981. As a representative of that body, he was part of the Canadian delegation to The Hague Conference on Private International Law in 1968, the year in which Canada was admitted to membership.

Lachlan was proud of the fact that the MacTavish clan was a sept of the Clan Campbell, and he served as Secretary of the Canadian Financial Campaign Committee devoted to raising funds for the restoration of the ancestral seat of the Duke of Argyll at Inverary.

In his private life Douk was an avid and successful curler and held executive offices in curling associations at both the national and international level. His hospitality at his curling club was generous and high spirited. We have, indeed, lost a loyal friend and close associate.

We would ask that our deepest sympathy and strong support be communicated to Elizabeth, his wife, and the members of his family.

APPENDIX B

TESTIMONIAL TO THE HONOURABLE JAMES C. McRUER, OC, LLD, DCL

Extract from the Minutes of the Ontario Law Reform Commission,
October 7, 1985, upon the death of the Honourable James C. McRuer,
OC, LLD, DCL

In Memoriam

THE HONOURABLE
JAMES CHALMERS McRUER, OC, LLD, DCL

Born August 23, 1890
Died October 6, 1985

We mourn the passing of our first Chairman, the Honourable J.C. McRuer, OC, LLD, DCL, sometime Chief Justice of the High Court, Supreme Court of Ontario. The record will show that he was

Chairman	July 1, 1964 June 30, 1966
Vice Chairman	July 1, 1966 Feb. 8, 1977
Member	July 1, 1964 June 1, 1982

But he was much more to us than the bare record discloses. He was our mentor, colleague and friend. It was he who, at an age when others seek to retire and lay down the burden, seized the opportunity of an early formal retirement from the Bench to launch a new and brilliant career in the public service through the advancement of law reform.

Mr. McRuer inspired the legislation which led to the formation and the form of the Ontario Law Reform Commission, with its more than twenty years of solid accomplishment in the service of the people of Ontario and beyond.

He amazed us by his energy. He was an inspiration to us in the disciplined devotion which he brought to his daily tasks. Thoroughness of research, with clarity of thought and expression in making his proposals for reform, were his hallmark and the surest of guides to his colleagues and associates joined in the common cause. His door was never shut. His warmth and openness encouraged a stream of visits to his office by the legal and permanent staff. He welcomed the opportunity to discuss and solve problems, not only legal problems, but also any other problem encountered by those with whom he worked. While of strong views, he was open to ideas and debate, and was always willing to change his position if a better argument was presented. To each individual, regardless of position, he accorded equal courtesy and respect.

He is now gone from us, but the shining example of his life and work point the way for others to follow.

APPENDIX C

TRIBUTE TO BARRY A. PERCIVAL, QC

Extract from the Minutes of the Ontario Law Reform Commission, February 3, 1986, on the retirement from the Commission of Barry A. Percival, QC

A warm and enthusiastic tribute was moved by Mr. Bell, seconded by Dr. Leal, and unanimously carried in the following terms:

We are deeply grateful to Barry A. Percival, QC, for his outstanding contribution to the work of the Ontario Law Reform Commission during the six years he has served as a Commissioner. Our colleague was an obvious and happy choice for appointment because of his deserved reputation as an outstanding student, being a double first in engineering and law, a highly competent and respected practitioner and a dedicated and creative law reformer. His commitment to the cause of law reform predated his formal association with the Commission and we trust will continue despite the severance of his formal ties with it.

We have the highest respect and admiration for our former colleague and wish him well in all that lies ahead for him.

APPENDIX D

ACTIVITIES OF THE CHAIRMAN

1985

- April 18 Guest Speaker, “Law Reform and the Charter of Rights”, Law Day 1985, at Bingeman Park, Kitchener.
- June 10 Guest Speaker, on the role of law reform commissions and the function of lawyers working for them, Section on Research and Policy Analysis, Canadian Bar Association — Ontario, Toronto.
- July 12 Introduced in the Ontario Legislature by the Attorney General on the First Reading of Bill 34, the *Freedom of Information and Protection of Privacy Act*. The Bill is based on a model Bill introduced and debated on several occasions whilst the Chairman was a Member of the Provincial Parliament.
- July 14-24 Attended the lecture series of the Canadian Institute for Advanced Legal Studies, at Queen’s College, Cambridge, England.
- August 11-16 As a Commissioner for Ontario, attended the annual meeting of the Uniform Law Conference of Canada, in Halifax, Nova Scotia.
- August 17 Attended the annual meeting of the Law Reform Conference of Canada, in Halifax, Nova Scotia, with M.A. Springman, Esq.
- August 18-22 As a member of the National Council, attended the annual meeting of the Canadian Bar Association, in Halifax, Nova Scotia.
- September 18 Guest Speaker, “The Law, Politics, the Military and Patriotism”, The Royal Commonwealth Society, Albany Club, Toronto.
- September 23 Attended the unveiling of a portrait in bronze of the Honourable James C. McRuer, OC, LL.D., DCL, at Osgoode Hall, Toronto. The Vice Chairman, Commissioners, Counsel and certain members of the legal staff also attended.
- October 9 Attended the funeral services of the late Honourable James C. McRuer, in Toronto, together with the Vice Chairman, Commissioners, Counsel and staff members.

- October 15 Attended a meeting of the Health Law Section, Canadian Bar Association — Ontario, where the topic was “Production or Reproduction” and the Commission’s *Report on Human Artificial Reproduction and Related Matters* was discussed. M. A. Springman, Esq., was a panelist, and the Vice Chairman, and Larry Fox, Esq., also attended.
- October 22 Guest Speaker on the history and work of the Commission, Waterloo-Wellington Estate Planning Council, Kitchener.
- October 31 Meeting with members of the Nielsen Task Force on Program Review, to discuss reform of the justice system in Canada. A presentation on the work of the Ontario Law Reform Commission was made to assist the Task Force in its review of the Law Reform Commission of Canada.
- November 1 Guest Speaker, Commencement activities, Forest Heights Collegiate, Kitchener.
- November 9 Guest Speaker, Remembrance banquet, Branch 530, Royal Canadian Legion, Waterloo.
- December 5 Guest Speaker, Travelers Insurance Canada, Board of Directors, to discuss the impact of the family law reform legislation on the insurance industry.
- 1986**
- February 20 Guest Speaker on the history and work of the Ontario Law Reform Commission, Toronto Chapter of Executive Women International.
- February 27 Panelist to discuss reconciliation as an option to the retributive basis for the current criminal justice system, annual meeting of Community Justice Initiatives, Kitchener-Waterloo.
- March 18 Met with Ontario Legislative Interns to discuss the history, activities and responsibilities of the Ontario Law Reform Commission.

APPENDIX E

VISITORS TO THE COMMISSION

1985

May 3

Jack Hodder, Esq., Barrister, and Ms. L. Longworth, Solicitor, both of Wellington, New Zealand, met with the Chairman and the Vice Chairman to discuss plans to create a New Zealand Law Reform Commission. This has since been accomplished, and Mr. Hodder is one of the Members of the New Zealand Commission.

June 3-5

Trevor Aldridge, Esq., a Commissioner of the English Law Commission, visited and had two days of meetings with various local experts, lawyers, and developers involved with condominium law, an area currently being studied in England and Wales.

September 9

The Honourable Mr. Justice Allen M. Linden, President of the Law Reform Commission of Canada, and Professor C.H.C. Edwards, QC, Chairman of the Manitoba Law Reform Commission, visited to discuss the future prospects of the Law Reform Conference of Canada and to begin plans for the 15th Anniversary events of the Law Reform Commission of Canada in May, 1986.

September 24

Anthony Lucky, Esq., the Corporate Secretary of the Royal Bank of Trinidad and Tobago Limited, met with the Chairman and the Vice Chairman and David Watt, Esq., of the Ministry of the Attorney General to discuss the admissibility of computer records into evidence in criminal trials.

October 1

Professor Patrick Schultz, Maître de Conférence de Droit Public at the University of Lille, in Paris, visited to discuss various current issues in administrative law and policy.

1986

March 12

Lindsay Curtis, Esq., Deputy Secretary of the Attorney General's Department, Canberra, Australia, visited to discuss with the Vice Chairman and Counsel issues of administrative law and our new project on Crown liability.

APPENDIX F

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
1. Report No. 1 [The Rule Against Perpetuities]	February 1, 1965	<i>The Perpetuities Act, 1966, S.O. 1966, c. 113</i>
2. Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	March 1, 1966	<i>do.</i>
3. Report No. 2 [The Wages Act: Assignment of Wages]	March 3, 1965	<i>The Wages Amendment Act, 1968, S.O. 1968, c. 142</i>
4. Report No. 3 on Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act, 1967, S.O. 1967, c. 72</i>
5. Report No. 3A on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
6. Report on The Evidence Act: Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51, s. 1</i>
7. Report on The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act, 1968-69, S.O. 1968-69, c. 65</i>
8. Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
9. Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act, 1975, S.O. 1975, c. 43</i> <i>The Ministry of Transportation and Communications Creditors Payment Act, 1975, S.O. 1975, c. 44</i> <i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>
10. Report on The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>
11. Report on The Law of Condominium	March 6, 1967	<i>The Condominium Act, 1967, S.O. 1967, c. 13</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
12. Report on the Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act, 1968-69</i> , S.O. 1968-69, c. 36
13. Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968</i> , S.O. 1968, c. 120
14. Annual Report 1967	January 15, 1968	Not applicable
15. Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
16. Report on the Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act, 1978</i> , S.O. 1978, c. 8, s. 1
17. Report on The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act, 1973</i> , S.O. 1973, c. 97
18. Report on Section 183 of The Insurance Act	October 3, 1968	—
19. Report on Trade Sale of New Houses	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act, 1976</i> , S.O. 1976, c. 52
20. Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act, 1968-69</i> , S.O. 1968-69, c. 58
21. Report on Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act (No. 2), 1975</i> , S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act, 1975</i> , S.O. 1975, c. 38 <i>The Trustee Amendment Act, 1975</i> , S.O. 1975, c. 39
22. Second Annual Report 1968	April 7, 1969	Not applicable
23. Report on the Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act, 1971</i> , S.O. 1971, c. 98

Title	Date of Report	Original Legislation Concerning Commission Proposals
24. Report on the Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act, 1970</i> , S.O. 1970, c. 96, s. 23
25. Report on Family Law, Part I: Torts	November 4, 1969	<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
26. Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act, 1970</i> , S.O. 1970, c. 54, s. 1
27. Report on Family Law, Part II: Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act, 1971</i> , S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act, 1977</i> , S.O. 1977, c. 42
28. Third Annual Report 1969	April 20, 1970	Not applicable
29. Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act, 1971</i> , S.O. 1971, c. 32, s. 2
30. Report on the Coroner System in Ontario	January 25, 1971	<i>The Coroners Act, 1972</i> , S.O. 1972, c. 98
31. Report on Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act, 1975</i> , S.O. 1975 (2nd Session), c. 9 <i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 134
32. Report on Land Registration	March 23, 1971	See <i>The Corporations Tax Amendment Act (No. 2), 1979</i> , S.O. 1979, c. 89 <i>Land Registration Reform Act, 1984</i> , S.O. 1984, c. 32
33. Fourth Annual Report 1970	March 31, 1971	Not applicable
34. Report on The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act, 1972</i> , S.O. 1972, c. 44 <i>Change of Name Act, 1986</i> , S.O. 1986, c. 7
35. Report on The Mortgages Act, Section 16	June 18, 1971	—
36. Report on Development Control	September 28, 1971	<i>The Planning Amendment Act, 1973</i> , S.O. 1973, c. 168, s. 10

Title	Date of Report	Original Legislation Concerning Commission Proposals
37. Report on Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i> <i>Powers of Attorney Amendment Act, 1983, S.O. 1983, c. 74</i> <i>Mental Health Amendment Act, 1983, S.O. 1983, c. 75</i>
38. Report on Occupiers' Liability	January 11, 1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
39. Report on Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
40. Report on Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
41. Fifth Annual Report 1971	March 31, 1972	Not applicable
42. Report on the Non-Possessory Repairman's Lien	October 4, 1972	—
43. Report on the Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i> <i>Courts of Justice Act, 1984, S.O. 1984, c. 11, ss. 19 and 25</i>
44. Sixth Annual Report 1972	March 31, 1973	Not applicable
45. Report on the Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
46. Report on Family Law, Part III: Children	September 25, 1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i> <i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<p><i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i></p> <p>See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i></p>
47. Report on The Solicitors Act	September 28, 1973	<p><i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 214(6)</i></p>
48. Report on Motor Vehicle Accident Compensation	November 6, 1973	—
49. Report on the Administration of Ontario Courts, Part III	December 17, 1973	<p><i>The Judicature Amendment Act, 1975, S.O. 1975, c. 30 (partial implementation)</i></p> <p>See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i></p>
		<p><i>The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52 (partial implementation)</i></p>
50. Report on Family Law, Part IV: Family Property Law	February 8, 1974	<p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i></p> <p><i>The Family Law Reform Act, 1978, S.O. 1978, c. 2 (partial implementation)</i></p> <p><i>Family Law Act, 1986, S.O. 1986, c. 4 (partial implementation)</i></p> <p>See <i>The Land Titles Amendment Act, 1978, S.O. 1978, c. 7</i></p> <p><i>The Registry Amendment Act, 1978, S.O. 1978, c. 8</i></p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
51. Report on Family Law, Part V: Family Courts	February 8, 1974	See <i>The Unified Family Court Act, 1976</i> , S.O. 1976, c. 85 <i>The Children's Probation Act, 1978</i> , S.O. 1978, c. 41 (partial implementation)
52. Seventh Annual Report 1973	May 6, 1974	Not applicable
53. Report on the International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40, s. 42
54. Eighth Annual Report 1974	March 31, 1975	Not applicable
55. Report on Family Law, Part VI: Support Obligations	April 18, 1975	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 (partial implementation) <i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2
56. Report on Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<i>The Religious Organizations' Lands Act, 1979</i> , S.O. 1979, c. 45 <i>The Anglican Church of Canada Act, 1979</i> , S.O. 1979, c. 46 <i>The Registry Amendment Act, 1979</i> , S.O. 1979, c. 94, s. 17 <i>Charities Accounting Amendment Act, 1982</i> , S.O. 1982, c. 11 <i>Mortmain and Charitable Uses Repeal Act, 1982</i> , S.O. 1982, c. 12, s. 1(1)
57. Report on Landlord and Tenant Law	March 15, 1976	<i>The Residential Tenancies Act, 1979</i> , S.O. 1979, c. 78 (partial implementation)
58. Report on the Law of Evidence	March 29, 1976	—
59. Ninth Annual Report 1975	March 31, 1976	Not applicable
60. Report on Changes of Name	August 16, 1976	<i>The Change of Name Amendment Act, 1978</i> , S.O. 1978, c. 28

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)</i>
		<i>Change of Name Act, 1986, S.O. 1986, c. 7 (partial implementation)</i>
		<i>Vital Statistics Amendment Act, 1986, S.O. 1986, c. 9 (partial implementation)</i>
61. Report on the Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i>
62. Tenth Annual Report 1976	March 31, 1977	Not applicable
63. Eleventh Annual Report 1977	March 31, 1978	Not applicable
64. Report on Sale of Goods	March 30, 1979	—
65. Twelfth Annual Report 1978	March 30, 1979	Not applicable
66. Report on Products Liability	November 16, 1979	—
67. Thirteenth Annual Report 1979	March 31, 1980	Not applicable
68. Report on the Enforcement of Judgment Debts and Related Matters, Part I	February 20, 1981	—
69. Report on the Enforcement of Judgment Debts and Related Matters, Part II	March 31, 1981	<i>Wages Amendment Act, 1983, S.O. 1983, c. 68 (partial implementation)</i>
		<i>Proceedings Against the Crown Amendment Act, 1983, S.O. 1983, c. 88</i>
		<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 177 (partial implementation)</i>
		<i>Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)</i>
70. Report on the Enforcement of Judgment Debts and Related Matters, Part III	March 31, 1981	<i>Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)</i>
71. Fourteenth Annual Report 1980-81	March 31, 1981	Not applicable
72. Report on Witnesses Before Legislative Committees	September 11, 1981	—
73. Report on Class Actions	March 31, 1982	—

Title	Date of Report	Original Legislation Concerning Commission Proposals
74. Fifteenth Annual Report 1981-82	March 31, 1982	Not applicable
75. Report on the Enforcement of Judgment Debts and Related Matters, Part IV	March 31, 1983	—
76. Report on the Enforcement of Judgment Debts and Related Matters, Part V	March 31, 1983	<i>Creditors' Relief Amendment Act, 1985, S.O. 1985, c. 1 (partial implementation)</i>
77. Report on Powers of Entry	March 31, 1983	—
78. Sixteenth Annual Report 1982-83	March 31, 1983	Not applicable
79. Report on the Law of Trusts	March 30, 1984	—
80. Seventeenth Annual Report 1983-84	March 30, 1984	Not applicable
81. Report on Human Artificial Reproduction and Related Matters	March 15, 1985	—
82. Twentieth Anniversary Report 1984-85	September 1, 1985	Not applicable
83. Twenty-First Annual Report 1985-86	March 31, 1986	Not applicable

Many of the Commission's earlier Reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8.

APPENDIX G

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	James R. Breithaupt, CStJ, CD, QC, MA, LLB
Vice Chairman	H. Allan Leal, OC, QC, LLM, LLD, DCL
Commissioners	Honourable Richard A. Bell, PC, QC, LLD William R. Poole, QC Barry A. Percival, QC (to January 22, 1986) Earl A. Cherniak, QC (from March 6, 1986) J. Robert S. Prichard, MBA, LLM (from March 6, 1986) Margaret A. Ross, BA (Hon.), LLB (from March 6, 1986)
Counsel	M. Patricia Richardson, MA, LLB
Secretary and Administrative Officer	Diane L. Murdoch
Senior Legal Research Officer	M. A. Springman, MA, MSc, LLB
Legal Research Officers	Larry M. Fox, LLB Marilyn R. Leitman, BA, LLM Judith A. Bellis, BA, LLB J. Jody Morrison, BA (Hon.), LLM
Administrative Assistant	Beverley G. Woodley
Secretary to Chairman	Stephanie Hlynka
Librarian	Elizabeth N. Page
Secretary to Counsel	D.M. Halyburton
Secretary to Administrative Officer	Mary Rose Betinvieh, BAA
Secretaries to Legal Research Officers	Cora Calixterio Sharon Nagasaka
Receptionist	Mary M. O'Hara

TWENTY-SECOND ANNUAL REPORT

1986-87

ONTARIO LAW REFORM COMMISSION

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Ministry of the
Attorney
General

TWENTY-SECOND ANNUAL REPORT

1986-87

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

The Ontario Law Reform Commission was established on May 8, 1964 by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

JAMES R. BREITHAUP, CSTJ, CD, QC, MA, LLB,
Chairman

H. ALLAN LEAL, OC, QC, LLM, LL.D., DCL,
Vice Chairman

EARL A. CHERNIAK, QC

J. ROBERT S. PRICHARD, MBA, LLM

MARGARET A. ROSS, BA (Hon.), LLB

M. Patricia Richardson, MA, LLB, is Counsel to the Commission. The Secretary to the Commission is Anne McGarrigle, LLB. The Commission's office is located on the Fifteenth Floor at 18 King Street East, Toronto, Ontario, Canada M5C 1C5.

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Ontario
Law Reform
Commission

To The Honourable Ian Scott, QC
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Twenty-Second Annual Report of the Ontario Law Reform Commission, for the period April 1, 1986 to March 31, 1987.



ONTARIO LAW REFORM COMMISSION

1987

Front Row, L to R: Mrs. Margaret A. Ross, Commissioner; Mr. James R. Breithaupt, Chairman; Ms. M. Patricia Richardson, Counsel

Second Row, L to R: Dean J. Robert S. Prichard, Commissioner; Dr. H. Allan Leal, Vice Chairman; Mr. Earl A. Cherniak, Commissioner

INTRODUCTION

This is the Twenty-Second Annual Report of the Ontario Law Reform Commission, for the period from April 1, 1986 to March 31, 1987. The year has seen three major Reports completed and others substantially advanced towards completion.

On December 16, 1985, the Attorney General gave to the Commission a Reference on Political Activity by Crown Employees, and requested that the Report be completed by July 1, 1986. Through the full commitment of all members of the staff, the Commissioners were able to deliver the Report to the Attorney General on June 27, 1986. The Report was tabled in the Ontario Legislature on July 11, 1986.

The *Report on Amendment of the Law of Contract* was delivered to the Attorney General on February 2, 1987 and tabled in the Ontario Legislature on March 18, 1987.

The *Report on the Law of Mortgages* was delivered to the Attorney General on March 31, 1987.

On April 7, 1986, the Attorney General met with the Commissioners at lunch in the Members' Dining Room of the Legislature. He welcomed the new Commissioners, Mr. Earl A. Cherniak, QC, Dean J. Robert S. Prichard and Mrs. Margaret A. Ross, and thanked the retiring Commissioners, the Honourable Richard A. Bell, PC, QC, LLD, and Mr. William R. Poole, QC, for their twenty-two years of service to the Commission. At the meeting of the Commission held on June 12, Dr. H. Allan Leal, the Vice Chairman, presented tributes to the Honourable Mr. Bell and Mr. Poole, which are attached to this Report as Appendix A.

In October, 1985, the Commission was asked by Mr. Brian C. Keith, of Borden & Elliot, Barristers and Solicitors, to consider the *Gold Clauses Act*, R.S.O. 1980, c. 189, and to recommend its repeal as being no longer of practical value with respect to certain foreign financing arrangements undertaken by Ontario residents. The Commission agreed with the proposal and recommended repeal to the Honourable Robert F. Nixon, the Treasurer of Ontario. Bill 130 was introduced on July 10, 1986 as an Act to repeal the *Gold Clauses Act*. The Bill received second reading on October 22 and both third reading and Royal Assent on November 4, as of which date it came into effect.

The Commission was saddened to learn of the death of Mr. Arthur A. Wishart, QC, the Attorney General for Ontario at the time the Commission was constituted. A testimonial to the late Mr. Wishart was recorded at the December meeting of the Commission. The testimonial was written by Dr. H. Allan Leal, the Vice Chairman, and is attached to this Report as Appendix B.

On March 10, 1987, the Commission welcomed the announcement of the award of the Law Society Medal to its Vice Chairman, Dr. Leal, in recognition of his outstanding service to the legal profession in accordance with its highest ideals.

As in previous years, the Commission has continued to receive various suggestions for reform and for additions to the general programme from members of the judiciary, the legal profession and the public. The Commission appreciates the interest taken in its work and extends sincere thanks to all of those who have taken the time to assist it.

THE PROGRAMME: REFERRED MATTERS

Section 2(1)(d) of the *Ontario Law Reform Commission Act* requires the Commission to inquire into and consider any matter referred to it by the Attorney General. No new matters were referred to the Commission during 1986-87.

COMPLETED PROJECTS

1. *Political Activity by Crown Employees*

During the past year, the Commission submitted to the Attorney General its *Report on Political Activity, Public Comment and Disclosure by Crown Employees*. The project was begun on December 16, 1985, when the Commission received a Reference from the Attorney General to inquire into and report on the law relating to these matters. An excerpt from the Letter of Reference, setting out the Terms of Reference for the project, appears at page 9 of the Commission's *Twenty-First Annual Report 1985-86*.

Upon receipt of the Letter of Reference, the Commission retained the services of Kenneth P. Swan, Esq., of the Ontario Bar, as Project Consultant. In addition, the Commission retained Kenneth Kernaghan, Esq., Professor of Public Administration and Politics, Brock University, to assist the Commission with research relating to the doctrine of political neutrality in the public service and its implications.

The Commission placed a notice in newspapers throughout the Province, inviting the submission of briefs and offering to hold public hearings. During eight days of public hearings, the Commission heard representations from a broad range of affected persons. In addition to oral representations, the Commission received some twenty-three written submissions.

At page 2 of the Report, the Commission describes the "essence" of the Reference, namely, "to identify the essential elements of the public interest in effective public administration on the one hand, and the individual freedoms of Crown employees on the other, and to strike a balance between those competing interests that, to the greatest extent possible, enhances rather than diminishes the contributions, individually and collectively, of those who serve the people of Ontario". The Commission emphasizes that "this complex and delicate task must be performed, moreover, within the exacting standards of constitutional guarantees set out in the *Canadian Charter of Rights and Freedoms*, a document still largely bereft of jurisprudential elaboration in this area".

Chapter 2 of the Report describes the doctrine of political neutrality, which has the status of a constitutional convention in Ontario, and which underlies the current restrictions on political activity and public comment by public servants.

Chapter 3 deals with present Ontario law, both common law and statutory, governing the right of public servants to engage in political activity and public comment concerning government policy, and the duties of public servants with respect to the confidentiality of government information. The chapter concludes with an analysis of the *Canadian Charter of Rights and Freedoms* and its potential impact upon the restrictions under the present law.

In order to place current Ontario restrictions in some perspective, chapter 4 contains a comparative analysis of the law in a number of other jurisdictions as it relates to political activity and public comment by public servants and confidentiality of government information. The chapter describes recent changes in the United Kingdom granting increased political rights to public servants, and American legislative attempts to protect public employees who “blow the whistle” by revealing confidential information relating to government wrongdoing.

Chapter 5 examines the case for reform of the existing law and describes the approach the Commission adopts in formulating its recommendations. The Commission’s conclusions and recommendations, including the alternatives considered and rejected by the Commission, are set out in chapter 6.

Before offering its recommendations for reform in respect of political activity, public comment, and disclosure of government information, the Commission makes three structural proposals. The first would expand the jurisdiction of the two appeal boards created for Crown employees who are members of, or excluded from, the bargaining units created under the *Crown Employees Collective Bargaining Act*. All Crown employees would have the benefit of a statutory right of arbitration before the appropriate board and would have access to one of the two boards in order to determine any issues relating to the interpretation of the Commission’s proposed rules governing political activity, critical comment, and disclosure of information.

The second structural proposal is that the proposed rules should apply to all Crown employees except those specifically excluded. In order to determine who should be excluded, the Report recommends that a review should be undertaken of all Crown agencies in order to identify those agencies that serve the Crown in capacities so dissimilar to the public service itself as to justify the exclusion of their employees from some or all of these rules.

The third structural proposal is for the creation of a new Office of Special Counsel, an office roughly akin to that which operates at the federal level in the United States. The main function of the Special Counsel, who would report to the Legislative Assembly, would be in relation to the Commission’s “whistleblowing” recommendations, discussed below; but the Special Counsel would also serve as a confidential advisor for individual Crown employees in respect of the operation of the proposed new rules.

Turning to political activity and public comment, the Report deals first with the categorization of Crown employees for the purpose of restrictions on their activities in these two areas. The Commission recommends that the public service should be divided into two categories, namely, a “politically

restricted” category, and a category comprising all other Crown employees, the members of which would be free to engage in political activity and critical comment, subject to certain restrictions relating to candidature and certain standards of conduct. These recommendations do not apply to the Ontario Provincial Police.

The restricted category would be composed of (1) persons employed in line management positions, from a deputy minister to a branch director, and the equivalent positions in Crown agencies; (2) persons directly involved in the administration of justice, including provincial court judges, lawyers and laypersons representing the Crown before the courts, agencies, boards, and commissions; court registrars; masters; and, generally, chairmen, vice chairmen, registrars and members of all permanent agencies, boards, and commissions exercising adjudicative functions; (3) employees directly involved in the formulation of policy and budgets in the government or an agency; (4) employees employed in a position confidential to the Lieutenant Governor, a Crown minister, a judge, and certain other senior officials within the government or an agency; and (5) employees whose primary job function is to act in a public representative capacity as official spokespersons in the interests of the Crown or an agency. Appeal procedures are recommended for those persons who wish to challenge their placement in the restricted category.

Employees in the restricted category would be permitted to engage in municipal political activity, subject to the restrictions now set out in section 11 of the *Public Service Act* — for example, nonaffiliation with a provincial or federal political party — and subject, as well, to the granting of prior permission from an authority designated for that purpose. Employees in the restricted category would be prohibited from engaging in the following political activities: (1) candidature in a provincial or federal election, or serving as an elected representative in a provincial legislature or the Parliament of Canada, unless they first resign from Crown employment; (2) soliciting funds for a federal or provincial political party or candidate; (3) associating his or her position in the service of the Crown with any political activity; and (4) canvassing on behalf or otherwise actively working in support of a provincial or federal political party or candidate.

Employees not in the restricted category could become candidates in a federal or provincial election so long as they took a leave of absence. Rules concerning the commencement of their leave are proposed. Where the employee is not elected, he or she would be entitled to return to work and, generally, would be treated as though employed in the public service for the full period of the leave of absence. Subject to the restrictions described below, which would apply to all Crown employees, employees not in the restricted category would be free to engage in all municipal political activities.

As indicated, the Commission recommends that certain protections and political restrictions should be applicable to all Crown employees. It would be provided by statute that no employee could be compelled to take part in any political undertaking or to contribute to any political party. Legislation would provide, as well, for a code of conduct governing all Crown employees. The code of conduct would preclude an employee, except where on a

candidacy leave of absence, from undertaking any political activity during working hours or at his or her place of employment. Crown employees would not be permitted to engage in any political activity that would (1) amount to coercion or give rise to a reasonable apprehension of coercion by reason of their position with the Crown; (2) take improper advantage of their position in the service of the Crown; (3) produce a direct conflict with the interests of the Crown in connection with their duties; or (4) give rise to a reasonable apprehension, on the part of the public, of bias in the making of any adjudicative, allocative, or evaluative decision in the course of their duties.

The Crown would be entitled formally to notify an employee that a particular activity is proscribed and will be subject to disciplinary action. The Crown's notice and any disciplinary action would be subject to grievance and appeal procedures. Employees would be able to seek the advice of the Special Counsel concerning whether any contemplated action is likely to contravene the political restrictions.

Turning to critical public comment by Crown employees, which would include both favourable and unfavourable comment, the Commission recommends that employees in the restricted category should not engage in critical comment on government policy or action that identifies the employee or the comment with a political party. In addition, all Crown employees would be prohibited from engaging in critical comment where the comment (1) creates a direct conflict with the interests of the Crown in connection with the performance of their duties; (2) creates a reasonable apprehension of bias in the performance of duties that involve adjudicative, allocative, or evaluative decision making; (3) creates a reasonable apprehension that working relationships within the public service will be impaired; or (4) involves their own ministry or agency, except where the policy or action directly affects them in their personal capacity. These restrictions would not apply to Crown employees commenting in the course of their duties or participating in the lawful activities of a bargaining agent or employee association. Again, the advice of Special Counsel could be sought concerning the propriety of any proposed critical comment.

The last major section of the Report pertains to the disclosure of government information by Crown employees. The section deals first with general disclosure rules and then turns to the topic of "whistleblowing". With respect to disclosure, it is recommended in the Report that the oath of secrecy under section 10(1) of the *Public Service Act* should be abolished. The Commission's proposals are intended to be consistent with the proposed *Freedom of Information and Protection of Individual Privacy Act*. Accordingly, the right to determine matters relating to disclosure, including the right to delegate such authority, would reside in the proper government "head" envisaged by the proposed Act.

While the Commission's new statutory regime governing disclosure would follow generally the proposed freedom of information legislation, two significant changes are proposed. The Report recommends that no distinction should be made between government information in a "record", as defined in the proposed legislation, and information not in a record, or between information that has been specifically requested by a member of

the public and information that an employee wishes to divulge on his or her own initiative.

As an exception to the general disclosure rules, the Commission recommends that Crown employees who “blow the whistle”, that is, disclose government information allegedly evidencing serious government wrongdoing, should be protected from disciplinary or other action where such disclosure is in the public interest. An employee wishing to disclose such information should be entitled either to rely on the common law defence in any subsequent proceedings brought against him or her, or on the Special Counsel procedure recommended by the Commission. Under that procedure, a Crown employee would be protected where he or she conveys to the Special Counsel information that the employee reasonably believes evidences (1) a violation of a statute, regulation, or rule; (2) mismanagement, waste of funds, or abuse of authority; (3) danger to health or safety; or (4) other wrongdoing of a similar nature by government or any agency, branch, division, or employee thereof, in the course of performing any public function or exercising any power conferred by law, that ought, in the public interest, to be disclosed.

The Commission proposes the establishment of a detailed procedure under which the Special Counsel would be under a duty to inquire into the employee’s allegation, to require the appropriate government “head” to investigate and report to the Special Counsel concerning the allegation, and, under certain circumstances, to disclose the information to the public or to whatever person or body the Special Counsel thinks appropriate.

In the context of “whistleblowing”, a separate set of rules would govern the disclosure of confidential government information. Such information, whether disclosed to the Special Counsel by an employee or in the possession of a government “head”, could be required to be kept confidential at the request of the “head”, subject, however, to an order of the court.

Finally, a review of federal criminal legislation in relation to disclosure is recommended in order to ensure that it is not inconsistent with the new provincial disclosure rules proposed by the Commission.

THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission may inquire into and consider any matter relating to reform of the law.

A. COMPLETED PROJECTS

1. *Law of Contract Amendment*

On February 2, 1987, the Commission submitted to the Attorney General its *Report on Amendment of the Law of Contract*. This project arose directly from the Commission’s project on the Sale of Goods, completed in 1979. It was decided at the outset that no attempt would be made to

codify the whole law of contracts. Rather, the approach was to examine areas of contract law that appeared to be in need of reform.

The Commission appointed Professors S.M. Waddams and J.S. Ziegel, both of the Faculty of Law, University of Toronto, as joint Project Directors. The Commission was assisted by a Research Team and Advisory Group, comprising academics, practising lawyers and judges with expertise in the various areas under study.

The Report is divided into fourteen chapters, and includes approximately seventy-five recommendations. In the first substantive chapter of the Report, chapter 2, the doctrine of consideration is examined. The Commission concludes that, while consideration should continue to be the principal criterion of enforceability of contracts, the scope of enforceability should be enlarged in four classes of contracts case: first, one-sided modifications of existing obligations; secondly, promises made in return for benefits previously received by the promisor or by a third party; thirdly, firm offers; and fourthly, cases of subsequent reliance. In all these cases, there is no consideration for the promise, and yet these are promises that, in some circumstances and to some extent at least, most people would say ought to be enforced. The recommendations seek to bring the law into line with those expectations.

In chapter 3, the Commission examines the law of formal contracts, and recommends that the seal should be denied all legal effect in the law of contracts, and that a witnessed signed writing should take the place of the seal for the purposes of contract law.

Chapter 4 addresses the matter of third party beneficiaries and privity of contract. The Report recommends that legislation be enacted to provide that contracts for the benefit of third parties shall not be unenforceable for lack of consideration or want of privity.

In chapter 5, the Commission considers the provisions in the *Statute of Frauds* still in force in Ontario involving writing requirements relating to contracts or other obligations. The Report recommends repeal of the writing requirements with respect to the following: promises by executors and administrators to pay damages out of their own estates; agreements governed by section 5 of the Statute; representations concerning another's creditworthiness; and contracts not to be performed within one year.

With respect to writing requirements for contracts relating to land, it is recommended that the existing requirements be repealed, subject to a requirement that a contract for the sale of land is not enforceable on the evidence of the party alleging the contract unless such evidence is corroborated by some other material evidence. Finally, the chapter contains recommendations dealing with writing requirements in relation to guarantees and contracts of indemnity.

In chapter 6, it is recommended that legislation should be enacted conferring power on the courts to grant relief from unconscionable contracts. The proposed legislation would include a non-exhaustive list of

factors to guide the courts in determining questions of unconscionability, and would provide the courts with ample and flexible remedial powers.

In chapter 7, the Report proposes that the existing penalty doctrine to determine the validity of stipulated damages clauses be replaced by the general unconscionability test recommended in chapter 6, and that relief from forfeiture of payments made under a contract should be available on the same basis.

Chapter 8 recommends abolition of the parol evidence rule. In its place, the Commission recommends the enactment of legislation providing that evidence of oral agreement to terms not included in, or inconsistent with, a written document should be admissible to prove the real bargain between the parties. In addition, the proposed legislation would provide that conclusive effect not be attached to merger or integration clauses.

In chapter 9, the Report discusses the developing doctrine of good faith, and recommends that it be given legislative recognition in relation to the performance and enforcement of contracts.

Chapter 10 deals with minors' contracts. The Commission proposes that minors' contracts should not, as a general rule, be enforceable against them, but that minors should have the right to enforce their contracts. An important exception to the general rule of unenforceability would be where the court is satisfied that the contract was in the best interests of the minor. In addition, the Commission recommends the enactment of a number of provisions dealing with specific concerns related to the contractual capacity of minors, including: affirmation and repudiation of a contract by a minor; court approval of minors' contracts; the effect of property dispositions made pursuant to a contract that is unenforceable against a minor; minors' liability for tortious conduct associated with unenforceable minors' contracts; enforceability of guarantees of minors' obligations; and minors' contracts and agency.

Contracts that infringe public policy are discussed in chapter 11. It is recommended that existing common law doctrines regarding illegal contracts should be retained, but that the court should be given flexible powers to relieve against the consequences of illegality. With respect to contractual provisions that unreasonably restrain trade, the Commission recommends that, where the party seeking to enforce such a provision has acted in good faith and in accordance with reasonable standards of fair dealing, the court should have the power either to delete the provision and enforce the contract as so amended, or to so reduce the scope of the provision that, at the time the contract was entered into, the provision as so reduced would have been reasonable, and to give effect to the contract as modified. In addition, it is recommended that, where deletion or reduction in scope would so alter the bargain between the parties that it would be unreasonable to allow the contract to stand, the court should have the power to decline to enforce the contract.

Chapter 12 deals with misrepresentation. The Commission recommends that a representee should be able to rescind a contract that was induced by

misrepresentation, whether innocent or fraudulent, even though the contract has been wholly or partly performed. However, this recommendation would, in the case of innocent (including negligent) misrepresentations, be subject to a discretion in the court to deny rescission or declare it ineffective, awarding damages in lieu thereof. In addition, whether or not a contract is rescinded, and again with respect to innocent and negligent misrepresentations, it is proposed that the court should have power to allow just compensation by way of restitution, or for losses incurred in reliance on the representation.

In chapter 13, the Commission recommends that legislation be enacted to provide that, unless a contrary intention appears, a party to a contract may waive a provision inserted into the contract solely for his or her benefit.

Finally, chapter 14 addresses the complex subject of mistake and frustration in the law of contract. In view of the substantial uncertainty in the law of mistake, the Commission proposes the adoption of detailed legislation setting out grounds for relief, types of relief, and the kinds of considerations a court should take into account in determining whether or not to grant relief.

With respect to the law of frustration, it is recommended that the treatment of frustration doctrines recommended in the 1979 *Report on Sale of Goods* be adopted for the general law of contract. To this end, the Report recommends the enactment of provisions that would clarify when and to what extent relief on the ground of frustration should be available. In addition, so far as the consequences of a frustrated contract are concerned, the Commission proposes that a modified version of the scheme for relief following frustration set out in the new *Uniform Frustrated Contracts Act* should be adopted in Ontario in place of the scheme set out in the existing Ontario *Frustrated Contracts Act*.

2. *Law of Mortgages*

On March 31, 1987, the Commission submitted to the Attorney General its *Report on the Law of Mortgages*. The project began as part of the Commission's undertaking to review the entire law of property in Ontario. While work on the project was interrupted on a number of occasions, in October, 1981, the Commission appointed as Director of the Project Barry J. Reiter, Esq., then Associate Professor of Law at the Faculty of Law, University of Toronto. A Research Team of academic experts was engaged, and an Advisory Board was constituted, consisting of representatives of the legal profession, institutional lenders and consumer groups.

During the first stage of the project, submissions were invited and representatives of various groups interested in mortgage law were consulted, with a view to identifying issues requiring remedial legislation. Thereafter, research was conducted on a broad range of topics and recommendations for reform were formulated. The Advisory Board was consulted extensively at various stages of the project.

The Report reflects the general consensus of those persons consulted that the current law of mortgages is not completely unworkable; virtually no

one was of the opinion that the existing system warranted wholesale reform. Accordingly, the recommendations leave untouched several areas of mortgage law. Indeed, the Report states that the nature of mortgage transactions should, so far as is possible and just, be left to the market, so that competition will continue to ensure innovation and a wide variety of choice in mortgage financing.

On the other hand, almost everyone believed that there were specific areas in respect of which reform would be desirable. The Commission's recommendations for reform cover a broad range of issues, and are responsive to four general goals. First, they seek to effect a proper balance between the expeditious and efficient recovery of the debt by lenders and the protection to be given to the legitimate interests of borrowers, by reducing opportunities for both delaying legitimate realization procedures and overreaching on the part of lenders. Secondly, the recommendations attempt to centralize and rationalize the law of mortgages, so far as it is feasible and desirable to do so, in a single statute. Thirdly, certain recommendations seek to address a number of specific substantive problems, in respect of which it was thought either that the law has made inappropriate choices in the first instance, or that initially justifiable choices have been overtaken by the facts of modern mortgage financing. Finally, many of the recommendations reflect a growing recognition that a distinction should be made between "consumer" and "commercial" borrowers who give land as security for a debt.

In chapter 2, the Report describes various types of land security interest prevalent in Ontario, and recommends the enactment of a new *Land Security Act*, which would apply not simply to "mortgages", narrowly defined, but to every transaction, regardless of its form, that is intended to create a security interest in land. It is also proposed that this broad legislative scope should be reflected in new terminology, and that the term used for all agreements creating security interests in land should be "land security agreement".

Chapter 2 also considers the creation and nature of a security agreement. The Report recommends that a security agreement should not be enforceable by or against a borrower unless the borrower has signed a security agreement that contains an adequate description of the land, acknowledges the lender's security interest, and is in registrable form. A procedural mechanism to render defective security agreements enforceable is provided. Finally, the Commission recommends that it should no longer be possible to create a security interest in land by means of a deposit of title deeds.

In chapter 3, the Commission recommends the abolition or modification of certain doctrines believed to be anomalous or anachronistic, including the doctrines of consolidation, tacking, and clogs on the equity of redemption.

In chapter 4, the Report considers the legal trend towards consumer protection legislation for financially unsophisticated borrowers. The creation of a class of "protected borrower" is recommended, in respect of whom special rights would be conferred. A borrower would be a protected borrower if he or she occupies all or part of the secured property as a residence, or if he or she resides on certain kinds of property not exclusively residential in nature, where such property secures a loan that does not exceed a specified

amount. Other persons, such as a guarantor of a loan secured in the above manner, or the spouse of a protected borrower, would also be given the proposed protections.

Chapter 5 of the Report deals with certain issues of priorities among lenders, and recommends that, subject to certain conditions, priority should be given for future advances made pursuant to a security agreement, as well as for advances made to protect the property. The Commission further recommends a remedy for a borrower where a lender refuses to make advances under a security agreement that contemplates such advances. Finally, priority would be given to a lender where a security agreement with a protected borrower is renewed on terms specified in the original agreement.

In chapter 6, the Report addresses a number of substantive rights and obligations of the borrower and lender under a security agreement. It is recommended that a protected borrower should have the right to prepay the security agreement at any time, provided that the lender is fairly compensated according to a stipulated formula for the calculation of such compensation.

The Report proposes that a borrower should be entitled to receive a discharge of the security agreement, free of charge, where the obligation under the security agreement has been satisfied. A borrower would continue to have the responsibility for registering such a discharge.

The Commission recommends that a borrower, and other specified persons, should be entitled to receive a statement of account upon written request to the lender, and that the statement of account should contain certain specified information. Under the Commission's proposal, a borrower would be entitled to receive one statement each year without cost; provision of all other statements would be upon payment of a prescribed fee. A lender would be liable for damages that arise from reasonable reliance on an incorrect statement. Recommendations are made concerning amendments to a statement of account and the means by which such amendments are made known to those persons who have received an incorrect statement.

Chapter 6 of the Report also considers the competing policies concerning the use of due-on-sale clauses. The Commission recommends that, where a lender includes a due-on-sale clause in a security agreement, a borrower should be entitled, upon a *bona fide* sale to an unrelated purchaser, to repay the loan without penalty or prepayment compensation, and the Report contains recommendations respecting the determination of a *bona fide* sale. Certain other clauses, including due-on-encumbrance and due-on-negotiation clauses, would be unenforceable.

Finally, in chapter 6, two insurance issues are addressed. The Commission proposes that a borrower should not be required to insure the secured property for an amount exceeding its replacement value, and also makes recommendations with respect to the right of a protected borrower to use insurance proceeds to repair or reconstruct the secured property.

Chapter 7 is concerned with the disclosure of information to borrowers at various stages of their relationship with lenders. The Report recommends

that protected borrowers should be entitled to have specified information at the time of advertising and first inquiry, and further, more detailed, information at least five business days prior to the execution of the security agreement. All borrowers would be entitled to receive a copy of the security agreement, and every residential security agreement would contain prescribed terms specifying certain statutory rights and obligations of the parties to the agreement. It is further recommended that, upon a borrower's default, a lender should disclose specified information regarding the respective rights and remedies of the parties.

Chapter 7 also discusses the use of plain language as an important aspect of disclosure to protected borrowers. The Report recommends that plain language should be utilized in all disclosure statements given to protected borrowers, as well as in the security agreement. In an appendix to the Report, the Commission provides a model plain language residential security agreement as a precedent for lenders in fulfilling this plain language requirement.

In chapters 8, 9, and 10, the Commission considers the rights and remedies of borrowers and lenders upon default. In chapter 8, the Report recommends that a revised extra-judicial power of sale procedure should become the lender's primary remedy against the secured property. Judicial sales would be abolished, and foreclosure would become the remedy of final resort. It is proposed that, generally, a borrower should be entitled to a minimum four month delay period following default, during which the borrower could make efforts to refinance or sell the secured property. The Report also contains important recommendations regarding the appropriate standard of care that should be required of a lender, and his or her agent, in exercising the power of sale.

Chapter 9 of the Report discusses the lender's right of action on the borrower's personal covenant to pay the secured debt. As a general rule, there would be no change to the lender's right to recover the full debt. However, the Report recommends a procedure whereby a protected borrower who has transferred property subject to a security agreement may be relieved from liability on the personal covenant. This procedure provides safeguards for the lender's legitimate concerns regarding the creditworthiness of the purchaser.

Chapter 10 of the Report is concerned with various issues relating to possession of the secured property. As a general rule, a borrower would be entitled to possession until default. A protected borrower would be entitled to retain possession until the expiration of the minimum four month delay period after default, subject to certain exceptions. It is proposed that the appropriate standard of care of a lender, and his or her agent, in possession should be that of commercially reasonable care. The Report makes recommendations with respect to a lender's claim for expenses while in possession, including the lender's own remuneration for management of the property, as well as the costs of an agent.

Chapter 10 also addresses the rights of a lender *vis-à-vis* a tenant of the secured property, including the right to demand and receive rent and the right

to possession. In the latter connection, the Commission recommends that a lender taking possession of secured property subject to a binding lease should be subject to the obligations of a landlord under the *Landlord and Tenant Act*.

With respect to lenders in possession of property subject to a non-binding lease, the Report draws a distinction between commercial and residential tenancies. Residential tenancies that meet certain specified criteria would be binding on a lender in possession for a period of time equal to the unexpired term of that tenancy, but not less than 120 days and not more than one year from the date the lender takes possession. Subject to this proposal, the lender would have all the rights and be subject to all the obligations of a landlord under Part IV of the *Landlord and Tenant Act*.

Where the non-binding residential lease does not meet the proposed criteria, or where the non-binding lease is of commercial premises, a lender taking possession would be entitled to evict the tenant, to enter into a new binding lease, or to demand and receive rent from the tenant, without creating a new lease. Tenants in possession pursuant to non-binding leases would be entitled to a ten day notice period prior to eviction.

Finally, the Report recommends that a lender's right to distrain with respect to property of a protected borrower should be abolished.

In chapter 11, the Commission addresses various miscellaneous issues. It is recommended that the Rules of Civil Procedure should continue to govern the resolution of disputes in the context of land security transactions, subject to an amendment that would allow a Master of the Supreme Court of Ontario to hear applications under the proposed *Land Security Act*. In addition, the Commission makes proposals for reform in respect of the service of documents. Finally, the Commission recommends the creation of a Land Security Committee, a permanent, specialized committee of experts in matters relating to land security, the mandate of which would be to monitor the law and practice in the area and to advise the Minister of Consumer and Commercial Relations on the need for reform.

B. PROJECTS IN PROCESS

1. *Administration of Estates of Deceased Persons*

Although some progress was made, during the past year, on the writing of the Commission's final Report, work was interrupted due to the priority accorded to the completion of the *Report on Political Activity, Public Comment and Disclosure by Crown Employees* and other commitments. The final Report will include chapters dealing with the following topics: the powers, duties, and liability of personal representatives; certain problems relating to beneficiaries; creditors and other claimants of the deceased; the transfer of assets of deceased persons; and the Surrogate Court.

The Commission originally intended to include in its Report a new *Administration of Estates Act*, which would bring together and revise relevant

portions of the *Trustee Act*, the *Estates Administration Act*, and the provisions governing practice under the *Surrogate Courts Act* and Rules. The new Act would also codify and revise a number of common law doctrines that now govern estate administration. However, in the past year, in order to expedite the completion of this project, it was decided to abandon the goal of preparing a Draft Bill.

Professor George W. Alexandrowicz, of the Faculty of Law, Queen's University, continues to assist the Commission on a consultative basis. In the early stages of the project, the Commission benefited from the assistance of an Advisory Committee of experts in estate administration, constituted under the chairmanship of Malcolm Archibald, Esq., QC, of the Ontario Bar.

2. *The Hague Convention Concerning the International Administration of the Estates of Deceased Persons*

The Commission's study of the question whether the Hague Convention Concerning the International Administration of the Estates of Deceased Persons should be given effect in Ontario began some years ago as a separate project. The Commission subsequently decided to examine the Convention as part of its project on Administration of Estates of Deceased Persons, in the context of a general consideration of the estates of foreign decedents. In the past year that decision was reconsidered and reversed.

In order to expedite completion of the *Report on the Administration of Estates of Deceased Persons*, and because there does not appear to be any particular urgency with respect to the Hague Convention, which is not yet in force, work on the Convention, and on estates of foreign decedents generally, has been deferred for the time being.

3. *Basic Principles of Land Law*

Three research papers, containing recommendations for reform of the basic principles of land law, have been prepared and considered by the Commission over the course of this project. Work on the preparation of the final Report is proceeding.

4. *Positive and Restrictive Covenants Affecting Freehold Land*

This project involves a consideration of two fundamental issues in connection with covenants affecting freehold land. First, it examines whether positive covenants should be made enforceable against successors in title of the original covenantor. Secondly, it examines whether the present law of restrictive covenants is in need of reform. The project includes a review of the present law of covenants, in both Ontario and the United States, as well as a review of specific reform proposals from a variety of jurisdictions.

A research paper, prepared by Professor A.H. Oosterhoff, of the Faculty of Law, University of Western Ontario, was considered by the Commission in November, 1985. Originally, the subject matter of this research was

intended for inclusion in the Commission's final *Report on Basic Principles of Land Law*. In July, 1986, however, the decision was taken to complete and publish a separate *Report on Positive and Restrictive Covenants Affecting Freehold Land*.

Essentially all matters of policy arising out of the research have been decided by the Commission and the writing of the final Report has commenced. It is hoped to submit the final Report during the coming year.

5. *Timesharing*

This project has involved a study of the present law governing timesharing in Ontario, with a view to assessing the need for enabling and regulatory legislation in the Province.

The research for the project was conducted by a member of the legal research staff, and included an examination of timeshare legislation in a number of American jurisdictions. The research was considered by an Advisory Committee of experts early in 1985, and by the Commission later that year.

During the past year, a draft *Report on Timesharing* was prepared. The Commission hopes to be in a position to review the draft Report in the near future and to submit its final Report to the Attorney General in the coming months.

6. *The Law of Standing*

The Law of Standing Project is concerned with the question whether private individuals, who wish to initiate litigation in the public interest, should be granted increased access to the courts. The initial stages of the project, involving research and the articulation of reform issues, are described in previous Annual Reports. The Commission is now considering recommendations for reform, and it is anticipated that the Report will be completed during the coming year.

The Commission continues to be ably assisted by the Project Director, Professor W. A. Bogart, of the Faculty of Law, University of Windsor.

7. *Contribution Among Wrongdoers*

This project is directed by Professor John M. Evans, of Osgoode Hall Law School, York University. The project is concerned with the law governing the allocation of responsibility between two or more persons whose conduct has caused the same loss or damage, as well as with the law relating to contributory negligence.

During the course of the project, nine research papers were prepared dealing with the following topics: joint and several liability; joint wrongdoers to whom a right of contribution should be available; settlements and

contribution claims; defences to the right of contribution; assessment of contribution; procedural aspects of contribution claims; and contributory negligence. Following consideration of these papers by the Commission, a draft Report and draft legislation embodying the Commission's decisions were prepared by the Project Director. Unfortunately, work on the final Report was temporarily suspended pending completion of the Reference on Political Activity by Crown Employees.

Recently, in light of concerns about the operation of the doctrine of joint and several liability, and legislation in a number of American jurisdictions abrogating or modifying the rule, the Commission decided to re-examine the issue of liability *in solidum* of concurrent wrongdoers, whereby a plaintiff whose injury has been caused by the legal wrong of more than one defendant may recover judgment for his or her entire loss against any single defendant, provided that the damage is indivisible. A research paper was prepared by Professor George L. Priest, of Yale Law School, and the issues were debated by the Commission at a meeting at which a number of academic experts were also present. With the resolution of this matter, the Commission intends, once again, to turn its attention to preparation of the final Report and accompanying draft legislation for submission to the Attorney General in the summer of 1987.

8. *Land Held Subject to French Title*

This project, directed by R.E. Priddle, Esq., QC, former Director of the Legal and Survey Standards Branch, Ministry of Consumer and Commercial Relations, is concerned with conveyancing problems that arise in connection with land, including land held subject to French title, in respect of which there is no Crown patent.

A working paper prepared by the Project Director was considered by the Commission in November, 1986. Due to other commitments, writing of the final Report has been delayed. However, we intend to complete this project during the coming year.

9. *Remedies for Wrongful Interference with Goods*

This project examines the specific relief remedies of replevin and detinue, damages remedies, such as trespass, conversion and interference with a reversionary interest, and recaption of chattels.

Completion of a draft Report by the Project Directors was delayed for some time by the need to reconcile recommendations made in this project with several made in the project on Contribution Among Wrongdoers and in the recently completed *Report on Amendment of the Law of Contract*. Virtually all of these problems have now been solved.

The Commission has a draft Report, including draft legislation, from the Project Directors, which covers all policy issues except one unresolved issue arising from the Contracts Report. Preliminary work on the preparation of the final Report has commenced, and it is anticipated that the Report

and accompanying draft legislation will be submitted to the Attorney General in the coming year.

10. *Compensation for Personal Injury and Death*

This project was added to the Commission's programme in November, 1985, and is being directed by Professor Stephen M. Waddams, of the Faculty of Law, University of Toronto.

During the past year, five research papers were prepared dealing with the following topics: pre-trial losses; non-pecuniary loss, including compensation for loss of guidance, care and companionship under the *Family Law Act, 1986*, and monetary limits on non-pecuniary loss; loss of future earning capacity in the case of injury to and death of wage earners and non-wage earners; future care costs; collateral benefits; exemplary damages; pre-judgment interest; income tax considerations; and periodic payments and structured settlements. Early in 1987, the research papers were considered by an Advisory Committee of experts, comprising members of the judiciary and the practising profession, as well as representatives of government and the insurance industry.

It is expected that the Project Director will present his Report containing recommendations for reform to the Commission in June, 1987. The Commission hopes to be able to submit its final Report to the Attorney General in the autumn of that year.

11. *Liability of the Crown*

This project was added formally to the Commission's programme in February, 1986, and is being directed by Professor Peter W. Hogg, of Osgoode Hall Law School, York University.

The project examines the substantive and procedural law relating to the legal liability of the Crown in right of Ontario. The objectives of the project are to make the law fairer to both Crown and subject, to simplify the law, and to bring it into conformity with the *Canadian Charter of Rights and Freedoms*.

During the past year, substantial progress was made on the project. Research commenced on a number of topics, including the following: the history and theory of Crown liability; the liability of the Crown in tort; remedies available against the Crown; Crown privilege; the extent to which the law of estoppel binds the Crown; and the extent to which the Crown is bound by statute. In addition, research was commissioned, and received, dealing with the liability of the Crown in contract, and discovery and Crown proceedings.

An Advisory Board was constituted under the chairmanship of the Project Director, consisting of members of the judiciary and the practising profession, representatives of government, and academic experts. The

Advisory Board has met, and will continue to meet, to consider the research and recommendations generated by the project.

It is anticipated that the research will be substantially complete early in 1988, and that the Project Director will submit his Director's Report to the Commission in the spring of that year.

FUTURE PROGRAMME

The past year has witnessed the completion of three major Reports dealing with Political Activity by Crown Employees, the Law of Contract, and the Law of Mortgages. During the coming fiscal year, the Commission expects to submit to the Attorney General Reports on the following topics: Contribution Among Wrongdoers; Compensation for Personal Injury and Death; Remedies for Wrongful Interference with Goods; and Timesharing. In addition, several Reports are now being written and will be published as time and resources permit. These Reports are concerned with Positive and Restrictive Covenants Affecting Freehold Land; the Administration of Estates of Deceased Persons; Land Held Subject to French Title; and the Law of Standing.

In light of the anticipated completion during the next eighteen months of the projects referred to above, the Commission intends to review its programme in the near future with a view to undertaking new projects. As always, the Commission welcomes suggestions regarding areas of the law in need of reform.

GENERAL ACTIVITIES AND ACKNOWLEDGMENTS


Attached to this Report are six Appendices relating to the activities and staff of the Commission and to events of importance during the past year. Appendix A records the tribute of the Commission to the Honourable R. A. Bell and to Mr. W. R. Poole on their retirement. Appendix B records our sentiments upon the passing of Mr. Arthur A. Wishart. Appendix C deals with the activities of the Chairman during the period under review, and Appendix D lists the visitors to the Commission during the year. Appendix E sets out a list of Reports prepared and submitted by the Commission since its inception in 1964, together with a table indicating the extent to which legislation concerning our proposals has been enacted. Appendix F contains a list of the officers and permanent staff of the Commission.

The Commission regrets the retirement of its Secretary and Administrative Officer, Mrs. Diane Murdoch, who left us on August 8, 1986. We have indeed been fortunate to have Ms. Anne McGarrigle join us as our new Secretary and Administrative Officer.

We thank the staff of the Commission for another successful year, achieved in great part because of their strong commitment to their duties.

We also thank you, Mr. Attorney, and the senior officers of your Ministry for the interest you have taken in our work and the assistance that has been afforded to us.

All of which is respectfully submitted,



James R. Breithaupt
Chairman



H. Allan Leal
Vice Chairman



Earl A. Cherniak
Commissioner



J. Robert S. Prichard
Commissioner



Margaret A. Ross
Commissioner

APPENDIX A

TRIBUTE TO THE HONOURABLE RICHARD A. BELL, PC, QC, LL.D., AND TO WILLIAM R. POOLE, QC

Extract from the minutes of the Ontario Law Reform Commission, June 9 and 10, 1986, on the retirement from the Commission of the Honourable Richard A. Bell, PC, QC, LL.D., and William R. Poole, QC, prepared by Dr. Leal:

Two of our esteemed colleagues will be leaving the Commission presently. They have each devoted almost twenty-two years to the cause of law reform as founding members of the Ontario Law Reform Commission. That represents half a professional lifetime and an awesome number of man hours.

It would be difficult to overstate how much is owed to them and their work in the renewing and restructuring of our socio-legal system for the betterment of humankind. It can be said with certainty that their influence extends far beyond their home jurisdiction. We wish to record here how much we value their friendship. We shall miss them very much.

THE HONOURABLE R. A. BELL, PC, QC, LL.D.

Dick Bell brought much to this Commission. He has a bountifully stored and highly disciplined legal mind. At least part of this is attributable to the fact that he spent six years in formal legal education, three at the School of Law, University of Toronto, where he performed with distinction, and three years at the Osgoode Hall Law School, graduating as a medallist. His lifetime in politics and government gave him a keen sense of relevance when it came to deciding what was in the public weal. He imparted this to us.

At one and the same time, having a mind for detail but never losing sight of the global picture, his efforts were always on track and his energy boundless. He taught us to be thorough without ceasing to be imaginative.

He is perhaps best known outside the Commission for his powerful dissent on the issue of the merger of the County and Supreme Courts in our *Report on the Administration of Courts*. Since his powers of persuasion are so seductive, he is even better known to us for the number of times that the initial Bell minority view has carried the day on vital issues. The like of Richard Bell is not found often enough in any professional group. How fortunate and privileged we were that he cast his lot with us.

WILLIAM R. POOLE, QC

Bill Poole is *sui generis*. One has only to mention his name to a newly-found acquaintance to establish common ground for an hour's delightful exchange on a favourite and unique person.

His roots in Neepawa, the self-proclaimed Keystone of the Keystone Province of Manitoba, are well known because he made them so by the telling.

He was educated at the University of Manitoba and McGill University in English, tested and tempered by the rigours of the North Atlantic in the RCNVR on HMCS Buctouche, and legally educated in the veterans classes at the Osgoode Hall Law School following World War II. These experiences all served to stamp Bill Poole with a commanding intellect in most areas of human experience. His chief preoccupation ever since has been to deny this fact.

He is one of the most literate people that one could know and the breadth of his taste in reading material is quite intimidating.

He has served the people of his adopted province competently and unselfishly in a variety of roles, including Counsel to the Milk Marketing Board and the Williams Commission on Freedom of Information and Privacy, in addition to his long and valuable service on the Ontario Law Reform Commission. This broad experience, combined with the insights gained from his thriving and varied legal practice in London, enabled him to influence, in an incisive way, the debate on both substantive and procedural issues. For those of us inside the Commission, perhaps his greatest contribution was his uncommon ability to take the rough edge off serious exchanges of opinion. He encouraged us not to take ourselves too seriously.

It has been for all of us one of the bonuses of professional life to have Bill Poole as a colleague and close personal friend.

APPENDIX B

TESTIMONIAL TO ARTHUR ALLISON WISHART, QC

Extract from the Minutes of the Ontario Law Reform Commission, December 9, 1986.

The Commission agreed to approve the following tribute to Mr. Wishart, which was prepared by Dr. Leal:

The Ontario Law Reform Commission has lost one of its closest friends and staunchest supporters. Arthur Allison Wishart, former Attorney General for Ontario, died on Sunday, November 23, 1986.

Elected to the Ontario Legislature from Sault Ste. Marie in 1963, he was catapulted into the office of the Attorney General for Ontario on March 25, 1964, in uniquely challenging circumstances.

With the exception of a short term at the close of his political career in 1971 as Minister of Consumer and Commercial Relations, he served as Chief Law Officer of the Crown in Ontario and discharged his duties with infinite patience, consummate skill, uncommon wisdom and great dignity.

These were the formative years of the Ontario Law Reform Commission and the epoch of the McRuer Royal Commission on Civil Rights in Ontario. To both of these socio-legal reform institutions he gave sustaining support and constant guidance. He was wont to say on public occasions that the recommendations in the reports of the Ontario Law Reform Commission were the foundation of his legislative programme. With that type of challenge and support we were driven to greater efforts and excellence. Human institutions inevitably reflect the influence of their founders and mentors. Contemporary society has reason to be deeply grateful to the late Arthur Wishart.

We mourn his death and offer our deepest sympathy to his family. May their grief be somewhat assuaged by the sure knowledge that it is shared by the host of his friends and admirers, including all of us at the Ontario Law Reform Commission.

APPENDIX C

ACTIVITIES OF THE CHAIRMAN

1986

- April 7 Attended a lunch given by the Attorney General for the retiring and new Commissioners in the Members' Dining Room at the Ontario Legislature.
- April 17 Participated in the workshop on law reform at the Law Day 1986 events, Bingeman Park, Kitchener.
- April 21 Met with the Honourable John Kelly and the Honourable John Engler, both members of the Michigan State Senate; and R. F. Chaloner, QC, Deputy Attorney General, and members of his staff, concerning the establishment of a Committee on Ontario-Michigan Relations.
- April 25 Attended the Fourth Annual Senior Women's Conference presented by the Affirmative Action Program for the Ministry of the Attorney General.
- May 22-23 Attended the 15th anniversary celebrations of the Law Reform Commission of Canada, in Ottawa, including a Seminar on the Future of Law Reform presented jointly by the Law Reform Commission of Canada and the Law Reform Conference of Canada. Dr. H. Allan Leal, the Honourable R. A. Bell, Mr. Earl A. Cherniak, Dean J. Robert S. Prichard and Mrs. Margaret A. Ross also attended.
- August 10 Attended the Law Reform Conference of Canada annual meeting, in Winnipeg, Manitoba.
- August 11-15 As a Commissioner for Ontario, attended the annual meeting of the Uniform Law Conference of Canada, in Winnipeg, Manitoba.
- August 15-21 As a member of the National Council, attended the annual meeting of the Canadian Bar Association in Edmonton, Alberta.
- September 7-13 Attended the 8th Commonwealth Law Conference, including meetings of the Commonwealth Law Reform Agencies, in Ocho Rios, Jamaica.
- September 27 Elected an Honorary Fellow of the Canadian School of Management in Toronto and was the guest speaker at their Convocation.

October 1	Attended a dinner for the Commissioners of the Law Reform Commission of Canada and their advisors studying the Criminal Law Project, at Osgoode Hall, Toronto.
October 9	Attended the luncheon meeting of the Empire Club of Canada as a head table guest, at which event the Attorney General of Ontario was the guest speaker.
October 14	Guest speaker at a dinner meeting of The Advocates Society to outline the Commission's current programme and future plans. Mr. Earl A. Cherniak and Mrs. Margaret A. Ross were also present.
October 16-18	Attended a Conference on Damages for Personal Injury at the Civil Law Section of the University of Ottawa Faculty of Law, in Ottawa.
October 29- November 1	Attended the National Seminar on Professional Liability, sponsored by the Canadian Institute for the Administration of Justice, in Vancouver, B.C.
November 5	Attended a Public Forum in Toronto organized by Persons United for Self-Help/Ontario (PUSH), at which Mr. Earl A. Cherniak was a debater on the topic of the future role of the courts and the insurance industry.
November 21	Guest speaker at the Rotary Club of Toronto (Black Creek), in Toronto.
December 2	Guest speaker at the East York Kiwanis Club, at Fantasy Farm, Toronto.

APPENDIX D

VISITORS TO THE COMMISSION

1986

- April 9 Mr. Douglas Marshall, Executive Secretary of the Public Service Association of the Northwest Territories, visited the Commission to discuss materials on the Project on Political Activity by Crown Employees.
- April 11 Anthony Lucky, Esq., Corporate Secretary and In-House Counsel of the Royal Bank of Trinidad and Tobago Limited, met with the Chairman and Vice Chairman to discuss matters of law reform in Trinidad and Tobago.
- April 14 Dr. Karl Friedmann, former British Columbia Ombudsman and currently a radio broadcaster with CJOR in Vancouver, B.C.
- Professor Clifford H. C. Edwards, QC, Chairman of the Law Reform Commission of Manitoba, visited the Commission to discuss the future programme of the Law Reform Conference of Canada.
- April 21 Lieutenant Colonel H. F. Whitehorne, President of the Jamaica Bar Association, and Lloyd W. Perry, Esq., QC, visited the Commission to discuss plans for the 8th Commonwealth Law Conference, and particularly those plans dealing with the Commonwealth Law Reform Agencies meeting held on September 10 at Ocho Rios, Jamaica.
- August 5 Michael J. Roux, Esq., Chairman, Motor Accidents Board of Australia, visited the Commission to discuss insurance studies and materials being developed in Ontario in that area.
- September 24 Paul Byrne, Esq., Commissioner of the New South Wales Law Reform Commission, visited to discuss the Commission's *Report on Class Actions*. Ms. Patricia Richardson, Mr. Mel Springman and Mr. Larry Fox were present to assist in the discussions.

APPENDIX E

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
1. Report No. 1 [The Rule Against Perpetuities]	February 1, 1965	<i>The Perpetuities Act, 1966, S.O. 1966, c. 113</i>
2. Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	March 1, 1966	<i>do.</i>
3. Report No. 2 [The Wages Act: Assignment of Wages]	March 3, 1965	<i>The Wages Amendment Act, 1968, S.O. 1968, c. 142</i>
4. Report No. 3 on Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act, 1967, S.O. 1967, c. 72</i>
5. Report No. 3A on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
6. Report on The Evidence Act: Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51, s. 1</i>
7. Report on The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act, 1968-69, S.O. 1968-69, c. 65</i>
8. Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
9. Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act, 1975, S.O. 1975, c. 43</i> <i>The Ministry of Transportation and Communications Creditors Payment Act, 1975, S.O. 1975, c. 44</i> <i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>
10. Report on The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>
11. Report on The Law of Condominium	March 6, 1967	<i>The Condominium Act, 1967, S.O. 1967, c. 13</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
12. Report on the Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act, 1968-69</i> , S.O. 1968-69, c. 36
13. Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968</i> , S.O. 1968, c. 120
14. Annual Report 1967	January 15, 1968	Not applicable
15. Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
16. Report on the Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act, 1978</i> , S.O. 1978, c. 8, s. 1
17. Report on The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act, 1973</i> , S.O. 1973, c. 97
18. Report on Section 183 of The Insurance Act	October 3, 1968	—
19. Report on Trade Sale of New Houses	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act, 1976</i> , S.O. 1976, c. 52
20. Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act, 1968-69</i> , S.O. 1968-69, c. 58
21. Report on Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act (No. 2), 1975</i> , S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act, 1975</i> , S.O. 1975, c. 38 <i>The Trustee Amendment Act, 1975</i> , S.O. 1975, c. 39
22. Second Annual Report 1968	April 7, 1969	Not applicable
23. Report on the Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act, 1971</i> , S.O. 1971, c. 98

Title	Date of Report	Original Legislation Concerning Commission Proposals
24. Report on the Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act, 1970</i> , S.O. 1970, c. 96, s. 23
25. Report on Family Law, Part I: Torts	November 4, 1969	<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
26. Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act, 1970</i> , S.O. 1970, c. 54, s. 1
27. Report on Family Law, Part II: Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act, 1971</i> , S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act, 1977</i> , S.O. 1977, c. 42
28. Third Annual Report 1969	April 20, 1970	Not applicable
29. Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act, 1971</i> , S.O. 1971, c. 32, s. 2
30. Report on the Coroner System in Ontario	January 25, 1971	<i>The Coroners Act, 1972</i> , S.O. 1972, c. 98
31. Report on Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act, 1975</i> , S.O. 1975 (2nd Session), c. 9 <i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 134
32. Report on Land Registration	March 23, 1971	See <i>The Corporations Tax Amendment Act (No. 2)</i> , 1979, S.O. 1979, c. 89 <i>Land Registration Reform Act, 1984</i> , S.O. 1984, c. 32
33. Fourth Annual Report 1970	March 31, 1971	Not applicable
34. Report on The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act, 1972</i> , S.O. 1972, c. 44 <i>Change of Name Act, 1986</i> , S.O. 1986, c. 7
35. Report on The Mortgages Act, Section 16	June 18, 1971	—
36. Report on Development Control	September 28, 1971	<i>The Planning Amendment Act, 1973</i> , S.O. 1973, c. 168, s. 10

Title	Date of Report	Original Legislation Concerning Commission Proposals
37. Report on Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i> <i>Powers of Attorney Amendment Act, 1983, S.O. 1983, c. 74</i> <i>Mental Health Amendment Act, 1983, S.O. 1983, c. 75</i>
38. Report on Occupiers' Liability	January 11, 1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
39. Report on Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
40. Report on Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
41. Fifth Annual Report 1971	March 31, 1972	Not applicable
42. Report on the Non-Possessory Repairman's Lien	October 4, 1972	—
43. Report on the Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i> <i>Courts of Justice Act, 1984, S.O. 1984, c. 11, ss. 19 and 25</i>
44. Sixth Annual Report 1972	March 31, 1973	Not applicable
45. Report on the Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
46. Report on Family Law, Part III: Children	September 25, 1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i> <i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i>
		See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i>
47. Report on The Solicitors Act	September 28, 1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 214(6)</i>
48. Report on Motor Vehicle Accident Compensation	November 6, 1973	—
49. Report on the Administration of Ontario Courts, Part III	December 17, 1973	<i>The Judicature Amendment Act, 1975, S.O. 1975, c. 30 (partial implementation)</i> See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
50. Report on Family Law, Part IV: Family Property Law	February 8, 1974	<i>The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52 (partial implementation)</i> <i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i> <i>The Family Law Reform Act, 1978, S.O. 1978, c. 2 (partial implementation)</i> <i>Family Law Act, 1986, S.O. 1986, c. 4 (partial implementation)</i> See <i>The Land Titles Amendment Act, 1978, S.O. 1978, c. 7</i> <i>The Registry Amendment Act, 1978, S.O. 1978, c. 8</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
51. Report on Family Law, Part V: Family Courts	February 8, 1974	See <i>The Unified Family Court Act, 1976</i> , S.O. 1976, c. 85 <i>The Children's Probation Act, 1978</i> , S.O. 1978, c. 41 (partial implementation)
52. Seventh Annual Report 1973	May 6, 1974	Not applicable
53. Report on the International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40, s. 42
54. Eighth Annual Report 1974	March 31, 1975	Not applicable
55. Report on Family Law, Part VI: Support Obligations	April 18, 1975	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 (partial implementation) <i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2
56. Report on Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<i>The Religious Organizations' Lands Act, 1979</i> , S.O. 1979, c. 45 <i>The Anglican Church of Canada Act, 1979</i> , S.O. 1979, c. 46 <i>The Registry Amendment Act, 1979</i> , S.O. 1979, c. 94, s. 17 <i>Charities Accounting Amendment Act, 1982</i> , S.O. 1982, c. 11 <i>Mortmain and Charitable Uses Repeal Act, 1982</i> , S.O. 1982, c. 12, s. 1(1)
57. Report on Landlord and Tenant Law	March 15, 1976	<i>The Residential Tenancies Act, 1979</i> , S.O. 1979, c. 78 (partial implementation)
58. Report on the Law of Evidence	March 29, 1976	—
59. Ninth Annual Report 1975	March 31, 1976	Not applicable
60. Report on Changes of Name	August 16, 1976	<i>The Change of Name Amendment Act, 1978</i> , S.O. 1978, c. 28

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)</i>
		<i>Change of Name Act, 1986, S.O. 1986, c. 7 (partial implementation)</i>
		<i>Vital Statistics Amendment Act, 1986, S.O. 1986, c. 9 (partial implementation)</i>
61. Report on the Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i>
62. Tenth Annual Report 1976	March 31, 1977	Not applicable
63. Eleventh Annual Report 1977	March 31, 1978	Not applicable
64. Report on Sale of Goods	March 30, 1979	—
65. Twelfth Annual Report 1978	March 30, 1979	Not applicable
66. Report on Products Liability	November 16, 1979	—
67. Thirteenth Annual Report 1979	March 31, 1980	Not applicable
68. Report on the Enforcement of Judgment Debts and Related Matters, Part I	February 20, 1981	—
69. Report on the Enforcement of Judgment Debts and Related Matters, Part II	March 31, 1981	<i>Wages Amendment Act, 1983, S.O. 1983, c. 68 (partial implementation)</i>
		<i>Proceedings Against the Crown Amendment Act, 1983, S.O. 1983, c. 88</i>
		<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 177 (partial implementation)</i>
		Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)
70. Report on the Enforcement of Judgment Debts and Related Matters, Part III	March 31, 1981	Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)
71. Fourteenth Annual Report 1980-81	March 31, 1981	Not applicable
72. Report on Witnesses Before Legislative Committees	September 11, 1981	—
73. Report on Class Actions	March 31, 1982	—

	Title	Date of Report	Original Legislation Concerning Commission Proposals
74.	Fifteenth Annual Report 1981-82	March 31, 1982	Not applicable
75.	Report on the Enforcement of Judgment Debts and Related Matters, Part IV	March 31, 1983	—
76.	Report on the Enforcement of Judgment Debts and Related Matters, Part V	March 31, 1983	<i>Creditors' Relief Amendment Act, 1985</i> , S.O. 1985, c. 1 (partial implementation)
77.	Report on Powers of Entry	March 31, 1983	—
78.	Sixteenth Annual Report 1982-83	March 31, 1983	Not applicable
79.	Report on the Law of Trusts	March 30, 1984	—
80.	Seventeenth Annual Report 1983-84	March 30, 1984	Not applicable
81.	Report on Human Artificial Reproduction and Related Matters	March 15, 1985	—
82.	Twentieth Anniversary Report 1984-85	September 1, 1985	Not applicable
83.	Twenty-First Annual Report 1985-86	March 31, 1986	Not applicable
84.	Report on Political Activity, Public Comment and Disclosure by Crown Employees	June 27, 1986	—
85.	Report on Amendment of the Law of Contract	January 15, 1987	—
86.	Report on the Law of Mortgages	March 31, 1987	—
87.	Twenty-Second Annual Report 1986-87	March 31, 1987	Not applicable

Many of the Commission's earlier Reports are no longer in print. Those that are still in print may be ordered from Publications Service, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada, M7A 1N8.

APPENDIX F

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	James R. Breithaupt, CStJ, CD, QC, MA, LLB
Vice Chairman	H. Allan Leal, OC, QC, LLM, LL.D, DCL
Commissioners	Earl A. Cherniak, QC J. Robert S. Prichard, MBA, LL.M Margaret A. Ross, BA (Hon.), LL.B
Counsel	M. Patricia Richardson, MA, LL.B
Secretary and Administrative Officer	Anne McGarrigle, LL.B
Senior Legal Research Officer	M. A. Springman, MA, MSc, LL.B
Legal Research Officers	Larry M. Fox, LL.B Marilyn R. Leitman, BA, LL.M Judith A. Bellis, BA, LL.B J. Jody Morrison, BA (Hon.), LL.M
Administrative Assistant	Beverley G. Woodley
Secretary to Chairman	Stephanie Hlynka
Librarian	Elizabeth N. Page, BA
Secretary to Counsel	D. M. Halyburton
Secretary to Administrative Officer	Mary Rose Betinvieh, BAA
Secretaries to Legal Research Officers	Cora Calixterio Sharon Nagasaka
Receptionist	Mary M. O'Hara

TWENTY-THIRD ANNUAL REPORT

1987-88

ONTARIO LAW REFORM COMMISSION

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Ministry of the
Attorney
General

TWENTY-THIRD ANNUAL REPORT

1987-88

ONTARIO LAW REFORM COMMISSION



Ministry of the
Attorney
General

The Ontario Law Reform Commission was established on May 8, 1964 by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

JAMES R. BREITHAUP, CSTJ, CD, QC, MA, LLB,
Chairman

H. ALLAN LEAL, OC, QC, LSM, LLM, LLD, DCL,
Vice Chairman

EARL A. CHERNIAK, QC

J. ROBERT S. PRICHARD, MBA, LLM

MARGARET A. ROSS, BA (Hon.), LLB

M. Patricia Richardson, MA, LLB, is Counsel to the Commission. The Secretary to the Commission is Anne McGarrigle, LLB. The Commission's office is located on the Fifteenth Floor at 18 King Street East, Toronto, Ontario, Canada M5C 1C5.

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Ontario
Law Reform
Commission

To The Honourable Ian Scott, QC
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Twenty-Third Annual Report of the Ontario Law Reform Commission, for the period April 1, 1987 to March 31, 1988.

INTRODUCTION

This is the Twenty-Third Annual Report of the Ontario Law Reform Commission, for the period from April 1, 1987 to March 31, 1988. We have again this year completed three major Reports and have made substantial advances in the completion of other projects.

The *Report on Compensation for Personal Injuries and Death* was delivered to the Attorney General in typescript form on November 10, 1987, and printed copies of the Report were tabled in the Ontario Legislature on April 18, 1988. Also delivered to the Attorney General during the past year were the *Report on Contribution Among Wrongdoers and Contributory Negligence*, dated March 23, 1988, and the *Report on Timesharing*, dated March 31, 1988.

On April 22, Dr. Leal received the Law Society Medal at a Convocation of the Law Society of Upper Canada, the award of which was noted in our Twenty-Second Annual Report.

Members, former members, and the staff of the Commission were all deeply saddened by the death on March 20, 1988 of our esteemed former colleague, the Honourable Richard A. Bell, PC, QC, LSM, LL.D. A testimonial written by Dr. H. Allan Leal, the Vice Chairman, was recorded in the Minutes of the April meeting of the Commission and is attached to this Report as Appendix A.

THE PROGRAM: REFERRED MATTERS

Section 2(1)(d) of the *Ontario Law Reform Commission Act* requires the Commission to inquire into and consider any matter referred to it by the Attorney General. No new matters were referred to the Commission during 1987-88. The Commission has completed Reports on all previous References.

THE PROGRAM: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission is empowered to inquire into and consider any matter relating to reform of the law. During the year under review, the Commission added to its program a project dealing with Exemplary Damages.

A. COMPLETED PROJECTS

1. *Compensation for Personal Injuries and Death*

In November, 1987, the Commission submitted to the Attorney General its *Report on Compensation for Personal Injuries and Death*. The project extended over a period of two years and was directed by Professor Stephen M. Waddams, of the Faculty of Law, University of Toronto. The Commission was assisted by a Research Team and an Advisory Board comprising members of the judiciary and the practising profession, as well as representatives of government and the insurance industry.

The purpose of the study was to take a careful and balanced look at the legal principles governing compensation for personal injuries and death, in order to ensure that they were fair, consistent and reasonable. The project was not initiated in response to any perceived crisis in relation to liability insurance or the operation of the tort system. Moreover, the project assumed the continued existence of the present, fault-based tort system, and did not extend to an examination of systems of accident compensation other than the current system based on individual responsibility of wrongdoers for injuries caused.

The Report is divided into nine chapters. Chapter 2 deals with third party claims under Part V of the *Family Law Act, 1986* for pecuniary losses and loss of guidance, care and companionship resulting from wrongful injury to or death of another person. The Commission concludes that claims for such losses should be abolished and replaced by a first party claim for loss of "working capacity", which it defines to include loss of the capacity to earn, to provide care and guidance (but not companionship) to a spouse, dependent children or dependent parents, and loss of the capacity to provide household services. In the case of personal injury resulting in death where there is no surviving spouse, dependent children or dependent parents, the damages in respect of loss of working capacity would be payable

to the estate, and distributed like any other asset of the estate in accordance with the general law governing succession. Where there is a surviving spouse, dependent children or dependent parents, damages assessed in respect of the deceased's loss of capacity to give care and guidance would be distributed among such persons in the amounts assessed in respect of each of them; damages for loss of working capacity, other than for loss of the capacity to provide care and guidance, would be apportioned by the court among the surviving spouse and dependent children and parents. All such damages would be distributed free of the claims of creditors and the costs of administering the estate.

As indicated, the proposed first party claim for loss of working capacity would include a claim for loss of the capacity to provide household services. Chapter 2 deals with the valuation of such services, and recommends that compensation for loss of capacity to perform household services should be assessed with reference to the average weekly earnings in Ontario (industrial aggregate).

Chapter 3 of the Report examines damages for non-pecuniary loss—that is, pain and suffering, loss of amenities and loss of expectation of life—in light of the principles laid down by the Supreme Court of Canada in the 1978 “trilogy” of cases, and concludes that there should be no change in the present law and practice respecting such damages. It is recommended, however, that, in the trial of an action for damages for personal injuries, the judge should be empowered to give guidance to the jury concerning the quantum of damages for non-pecuniary loss, and that counsel should have the right to make submissions to the judge or the jury concerning the quantum of damages, subject to the trial judge's overriding discretion to control the proceedings of the court. It is also recommended that an appellate court should have the power, when setting aside an assessment of damages for non-pecuniary loss, to substitute its own assessment instead of ordering a new trial.

Chapter 4 of the Report deals with awards for the cost of future care of an injured person. The Commission concludes that the present test of “reasonableness” to determine the appropriate standard or level of care is satisfactory, and that no legislation is necessary. The Commission also makes a number of recommendations relating to “gross-up”, that is, an amount awarded to offset income tax liability on income from investment of a future care award.

First, the Commission recommends that the Government of Canada be urged to introduce a tax sheltered plan that would permit investment in the plan of the entire amount awarded for future care. Investment income would be permitted to accumulate in the plan free of tax, and plaintiffs would be taxed on withdrawals until the amount remaining in the plan equals the amount paid in, which amount could be withdrawn free of tax. Secondly, and irrespective of amendments to the *Income Tax Act*, the Commission recommends legislative recognition of the propriety of an award of gross-up. However, in order to achieve consistency in the calculation of gross-up and to avoid the necessity of repeated hearings on the

estimates of such matters as the future rate of inflation and income taxation, the Report recommends that the assumptions underlying the calculation of gross-up be standardized, and proposes a set of standardized assumptions to be implemented by amendment to the Rules of Civil Procedure and reviewed at least once every four years.

In chapter 5, the Commission considers whether the court should be empowered to award damages in the form of periodic payments, in lieu of a lump sum award, regardless of whether all parties consent, and to review such an award at the instance of either party. The Report concludes that the law of Ontario should not be changed to accommodate a system of periodic payments, whether reviewable or non-reviewable, that could be imposed by the court without the consent of the parties.

Chapter 6 of the Report deals with collateral benefits. The Commission affirms the “collateral source rule”, which precludes the deduction of collateral benefits from a damage award, but proposes changes to ensure that double recovery does not occur. Accordingly, the Commission recommends that where an injured person has received an indemnity, including an *ex gratia* payment, in respect of any specific pecuniary loss claimed from the wrongdoer, the damages awarded in respect of the loss should be held in trust for the collateral source. The wrongdoer, or her insurer, would be entitled to pay the damages directly to the collateral source and would receive a discharge of liability to the extent of the payment. No such payments would be permitted until the injured person had received compensation for the entire loss from all sources.

In chapter 7, the Commission makes a number of proposals relating to prejudgment interest. Among the Commission’s proposals are recommendations that prejudgment interest run from the date upon which the cause of action arose, that rates be set quarterly, and that prejudgment interest be compounded, with quarterly calculations.

A number of miscellaneous issues are considered in chapter 8. The Commission reviews the current law and practice governing contingencies, the discount rate, and management fees, and concludes that amending legislation is unnecessary. However, the Commission recommends that, at least once every four years, the Rules Committee of the Supreme and District Courts should review the discount rate to be used in determining the amount of an award in respect of future pecuniary damages.

Exemplary damage awards are considered in chapter 9, and the conclusion is reached that such damages, which are non-compensatory and which are not restricted to actions involving personal injuries, are beyond the scope of the Report and should form the subject of a separate project.

The Report includes two draft Bills, the *Personal Injuries Compensation Act* and the *Courts of Justice Amendment Act*, which are intended to give legislative form to the Commission’s recommendations. The Report also includes a draft Rule that would implement the Commission’s

proposals concerning the standardization of assumptions underlying the calculation of gross-up.

2. *Contribution Among Wrongdoers and Contributory Negligence*

In March, 1988, the Commission submitted to the Attorney General its *Report on Contribution Among Wrongdoers and Contributory Negligence*. The Project was directed by Professor John M. Evans, of Osgoode Hall Law School, York University. The Report deals primarily with the rights and obligations, as between themselves, of persons—called “concurrent wrongdoers”—whose wrongful conduct has been the cause of a single, indivisible loss to another. The right of one concurrent wrongdoer, who has paid more than his lawful share of the damage award, to obtain compensation from another concurrent wrongdoer is referred to as the “right to contribution” and is founded on the fundamental restitutionary principle of unjust enrichment.

In addition to rights to contribution, the Report examines the rights of the injured person *vis-à-vis* concurrent wrongdoers and the effect of the injured person’s contributory fault on the extent of his recovery. Under the Commission’s recommendations for reform, the *Negligence Act* would be repealed and a new *Contribution and Comparative Fault Act* would be enacted to deal comprehensively with the matters just described.

In chapter 2, the Commission examines the characteristics of the two classes of concurrent wrongdoers—that is, “joint” wrongdoers, where there is a concurrence in the chain of causation leading to a single loss as well as mental concurrence in some common enterprise, and “several” wrongdoers, where the concurrence is only in respect of causation. At common law, four consequences flowed from this distinction. While three of these consequences have been abolished by legislation, the “single judgment rule”—by which, where joint tortfeasors are sued together, only one judgment can be given against them, and damages cannot be severed or apportioned—continues to apply. In addition, some further anomalies still exist. The Report recommends that the single judgment rule should be abolished and that the position of joint and several concurrent wrongdoers *vis-à-vis* the injured person should be assimilated.

Chapter 3 of the Report deals with the rule that a concurrent wrongdoer is liable *in solidum* to the injured person; that is, each wrongdoer is liable for the entire loss. After considering the rationale for, and the criticisms of, this rule, the Commission recommends that there should be no change in the law respecting *in solidum* liability, even where the plaintiff is contributorily negligent. Accordingly, the injured person would not have to bear the risk of the insolvency or absence of a concurrent wrongdoer.

In chapter 4, the Commission describes the nature and scope of the right to contribution among concurrent wrongdoers, including contract breakers, and among those whose liability depends on a common debt. The Report first examines the types of liability that now give rise to a right to

contribution and the principal objections to and justifications for retaining that right, and then recommends that a right to contribution should be capable of arising among all concurrent wrongdoers, irrespective of the nature of the legal obligation that gives rise to their liability in damages. However, the new statutory right to contribution would not extend to those concurrently liable for a debt.

With respect to the application of the proposed legislation, the Report recommends that the new Act should supersede any other right to contribution (as distinct from “indemnity”) unless, in the case of a statutory right, it is specifically provided in the other statute that the contribution provisions of that statute apply notwithstanding the provisions of the proposed Act. In addition, the new contribution provisions would apply in the case of trustees and other fiduciaries, except as otherwise specifically provided by the revised *Trustee Act* proposed by the Commission in its *Report on the Law of Trusts* (1984). Finally, rights to indemnity—which arise where two persons are liable for the same damages or debt, but the liability of one is primary and the liability of the other is secondary—would not be affected by the new Act.

Chapter 5 of the Report deals with a number of issues concerning the relationship between rights of contribution and settlements. The Commission concludes that a right of contribution should continue to be granted in favour of a person who has settled, either fully or partially, with the plaintiff. It would be no defence to a contribution claim that the settling claimant could never have been successfully sued by the plaintiff, although the court could refuse contribution where, essentially, the settlement was made in bad faith. The Report also recommends that where, following a settlement between the plaintiff and a concurrent wrongdoer, another concurrent wrongdoer has been held liable to the plaintiff or has settled the latter’s claim for an amount that exceeds his proportionate share of the liability, he should be entitled to claim contribution from the first wrongdoer for the excess, even though that wrongdoer has ceased to be liable to the plaintiff because of the settlement.

In chapters 6 and 7, the Report focuses on the possible defences that may be raised against contribution claims. Chapter 6 is concerned with the effect of the liability to the injured party of the claimant and the contributor. In the case of the claimant, the Report recommends that, where the contribution claim is made in a legal proceeding separate from that in which judgment was awarded against the claimant in favour of the injured party, it should be no defence for the contributor to show that the court erred in holding the claimant liable to that party, except where the judgment was obtained by collusion or fraud. However, the contributor would be entitled to show that the court wrongly assessed the injured person’s loss in the earlier action.

Insofar as the contributor’s liability is concerned, the Commission proposes that a person who could at no time have been successfully sued by the injured person should never be liable to pay contribution. In addition, where a concurrent wrongdoer’s liability to the injured person is, for any

reason, less than that of another concurrent wrongdoer, the first wrongdoer would not be required to pay by way of contribution a sum that exceeds the amount of that liability.

Chapter 7 deals with situations in which the contributor was at one time liable to compensate the injured person, but where subsequent events have rendered him immune. The Report considers the question whether contribution may be obtained from such a wrongdoer in three contexts: (1) where there are different limitation periods governing the enforcement of the injured person's rights against the various wrongdoers; (2) where the contributor was successful in a prior action against him by the injured person; and (3) where there has been a settlement, release, or waiver of the contributor's liability by the injured person.

The Commission recommends that it should never be a defence to a contribution claim for the contributor to show that his liability to the injured party has ceased by reason of such events as the expiry of a statutory limitation period, dismissal of the injured person's action for delay, or the injured person's failure to comply in time with a procedural requirement. However, it would be a defence to establish that proceedings were instituted by the injured person against the claimant, or a settlement was made between them, after the expiry of a limitation period contained in a contract made between the contributor and the injured person before the latter's cause of action arose against the contributor. If judgment on the merits has already been given in favour of the contributor against the injured person, the contributor would not be liable to pay contribution, unless the judgment was obtained by collusion or fraud. Finally, the Report recommends that it should not be a defence to establish that the contributor has ceased to be liable to the injured person by virtue of a settlement made with, or a release or waiver of liability given by, the injured party after that party's cause of action arose against the contributor.

Chapter 8 of the Report assumes that a right of contribution has been established and examines the sum to which the concurrent wrongdoers are required to contribute, the persons among whom this sum ought to be divided, and the quantification of each of the parts into which the sum is to be divided. Most significant is the proposal that the amount of contribution recoverable from a concurrent wrongdoer should be such as may be found by the court to be just and equitable, having regard to the degree of responsibility of each concurrent wrongdoer for the damage caused. If it is not practicable to make such an assessment, each wrongdoer would be deemed to be equally responsible for the loss.

In chapter 9, the Commission turns to consider several aspects of civil procedure pertaining to contribution claims. The Report deals first with proceedings for claiming contribution and recommends that a contribution claim should be made by means of either a crossclaim or a third party claim, unless (in the former situation) this is impossible, or (in the latter situation) it is either impossible or impracticable. Where the claimant has settled with the injured person, he would continue to be entitled either to institute or to continue contribution proceedings against another concurrent wrongdoer.

A second topic covered in chapter 9 concerns the limitation period governing contribution claims. It is recommended that the limitation period should be two years, running from either the date of the judgment or the date when the settlement was made.

The third subject addressed in the chapter is the time at which a contribution order may be enforced. The Report recommends that the order should be executable when the claimant has discharged a greater proportion of the common liability than represents his degree of fault, or when the contributor can no longer be sued successfully by the injured person. When the claimant has not discharged fully his liability to the injured person, the money recovered from the contributor would have to be paid into court in satisfaction of the claimant's liability to that person.

The final chapter of the Report is concerned with contributory fault, that is, the failure to exercise reasonable care for one's own person, property, or other recognized interest. After describing the common law and statutory background and recommending the continuance of apportionment legislation, the Report turns to an examination of legal wrongs that ought to be subject to apportionment. The Commission concludes generally that all torts, including those of negligence and strict liability, as well as intentional torts, should be included within the proposed apportionment legislation. In addition, apportionment would be available where liability for damages arises from a breach of a statutory duty, a breach of a duty of care arising from a contract, and a breach of contract that results in personal injury or property damage (although apportionment for loss caused by breach of contract would be subject to any express or implied agreement). Apportionment would apply to every type of loss, including economic loss. While the proposed legislation would not be extended expressly to a breach of fiduciary duty, including breach of trust, the Report does recommend that nothing in the Commission's proposed legislation should derogate from the court's power to apportion damages apart from statute.

In the context of contributory negligence and multiple wrongdoers, the Commission expresses the view that the *in solidum* liability of a concurrent wrongdoer to a contributorily negligent plaintiff should continue unchanged even where one of the wrongdoers is absent or insolvent, and even in the case where three or more parties suffer damage for which each party is partly responsible.

With respect to the application of the apportionment provisions of the proposed Act, the Report recommends that such provisions should have primacy over any other statute, unless the other statute specifically states that it is to apply notwithstanding the proposed Act.

3. *Timesharing*

The Commission has submitted to the Attorney General its *Report on Timesharing*, dated March 31, 1988. The Report reviews the present law affecting timesharing in Ontario, as well as timeshare legislation in the

United States, and concludes that there is a need for both enabling and regulatory legislation in this jurisdiction.

The Report recommends the enactment in Ontario of a *Timeshare Act*, which would deal comprehensively and systematically with all aspects of timesharing. The Act would contain enabling provisions that would recognize the validity and facilitate the conveyance of this unique form of property interest, as well as regulatory provisions governing the sale, ownership, management, and termination of timeshare arrangements. The jurisdiction of the proposed Act would be expansive, comprehending domestic timeshare projects, as well as foreign projects marketed in Ontario, that are situated on real property, whether of a fee or non-fee nature. The legislation would not, however, apply to timeshare interests in leaseholds or other personal property.

Timesharing would be regulated, and the proposed Act administered, by an agency set up within the Business Practices Division of the Ministry of Consumer and Commercial Relations. The offices of Registrar and Assistant Registrar would be created under the supervision of the Director of the Business Practices Division. All timeshare developments covered by the proposed legislation would be required, prior to being marketed within the Province, to register with the Registrar by filing certain statutorily specified information.

In order to permit potential purchasers to make an informed decision concerning the purchase of a timeshare interest, the proposed legislation would require that, prior to executing an agreement of purchase and sale, purchasers be given a disclosure statement, the contents of which would be prescribed by statute. Purchasers would be entitled, within ten days of receipt of the disclosure statement, to rescind the agreement. The Act would also require exchange companies operating within the Province to file information relating to their exchange programs with the Registrar, and would require developers to provide prospective purchasers with statutorily specified information regarding any exchange opportunities offered in conjunction with the sale of a timeshare interest.

With respect to the marketing of timeshare interests, the Report recommends that the proposed timeshare legislation should contain provisions dealing with such matters as misleading statements, promotional activities, and the use of advertising materials in connection with the sale of timeshared property. In order to qualify as timeshare salespersons, individuals would be required to pass a special examination administered by the Registrar, and to be either employees of a registered real estate broker or employees of a developer who has complied with the registration requirements under the Act. In the latter case, however, salespersons would be entitled to sell timeshare interests only in the employer-developer's projects.

The proposed *Timeshare Act* would also contain extensive provisions intended to protect purchasers in the event of developer insolvency prior to completion of the sale of a timeshare interest, as well as upon or after completion. These protective devices would include the holding of purchase

monies in trust, the entering into by the developer of non-disturbance agreements with holders of blanket encumbrances against the property and registration of such agreements with the Registrar, and the posting of security, for example a bond or irrevocable letter of credit. In addition, the *Timeshare Act* would authorize the registration on title by timeshare purchasers of both ownership and right-to-use timeshare interests. Developers would be required to register against title to the timeshare property a general "notice of timeshare plan", which would provide notice of the existence of a timeshare project and of the rights of the owners.

The Report also deals in some detail with the management of timeshare projects. The management provisions of the proposed legislation, which would not apply to foreign timeshare developments marketed in Ontario, would require the creation of an owners' association for both ownership and right-to-use projects; in the latter case, however, the developer would be entitled to reserve to himself certain management functions, including the day-to-day operation of the property, provided that this intention is disclosed in the application for registration and in the disclosure statement.

Under the proposed statute, the owners' association would be a corporation without share capital, whose members would be the timeshare owners, and the duties of the association with respect to the management of the property would be specified in a general way. The affairs of the timeshare owners' association would be managed by a board of directors elected by the owners. The board would be empowered to pass by-laws, which would require approval by the owners. Daily management of the property could be delegated to a managing agent under a written management agreement. Timeshare interest owners would be given certain statutorily specified rights to participate in the management of the property, generally equivalent to those afforded to owners of condominium units under the *Condominium Act*. In addition, the Act would authorize the utilization of certain vote-by-mail mechanisms, whereby owners could participate by mail in the management of the project. The Report also contains recommendations concerning the allocation of voting rights among timeshare interest owners.

The Report addresses a number of miscellaneous issues, including some that have proved problematic in the timeshare context, and contains recommendations concerning, among other matters, rights of partition, premature termination of the timeshare arrangement, liability of timeshare owners in tort, and express and implied warranties.

Finally, the Report recommends a comprehensive remedial scheme that would include civil, administrative, and penal sanctions. A timeshare purchaser or an owners' association would be entitled to bring a civil action for damages or injunctive or declaratory relief against a developer or any other person subject to the proposed *Timeshare Act* who has failed to comply with any provision of the Act, the regulations, or the timeshare instruments. The civil remedies specified in the Act would not preclude resort to any other statutory or common law remedy or cause of action. The Act would also expressly authorize a timeshare owner or owners' association to bring a class action for damage to the property of the timeshare

development, to the assets of the owners' association, or to the individual units, as well as for personal injury to the owners.

With respect to administrative sanctions, the Report recommends that the Ministry of Consumer and Commercial Relations should be responsible for establishing a comprehensive scheme of administrative remedies similar to that in force under existing consumer protection legislation, which would involve the conferral upon the Registrar, the Director of the Business Practices Division, and the Minister of Consumer and Commercial Relations of certain specified powers. Penal provisions generally similar to those appearing in section 50 of the *Real Estate and Business Brokers Act* are also proposed.

B. PROJECTS IN PROCESS

1. *Administration of Estates of Deceased Persons*

During the past year, the preparation of the final Report was temporarily suspended in order to complete other Reports. Work has now resumed and priority is being given to completion of this project within the coming fiscal year.

As explained in earlier Annual Reports, the *Report on the Administration of Estates of Deceased Persons* will address the following topics: the powers, duties, and liability of personal representatives; certain problems relating to beneficiaries; creditors and other claimants of the deceased; the transfer of assets of deceased persons; and the Surrogate Court.

2. *Basic Principles of Land Law*

Three research papers, containing recommendations for reform of the basic principles of land law, have been prepared and considered by the Commission over the course of the project. Three draft chapters of the final Report have been written; the preparation of the remainder of the Report is proceeding as time and other priorities permit.

3. *Positive and Restrictive Covenants Affecting Freehold Land*

This project involves an examination and assessment of the law of covenants affecting freehold land generally, with particular reference to two fundamental issues: (1) whether, and under what circumstances, the burden of positive covenants should be allowed to run with freehold land; and (2) whether, and to what extent, the present equitable doctrine of restrictive covenants is in need of reform. The final Report will include a review of the present Ontario law of covenants, as well as a summary of the relevant American law. It will also include a review of specific proposals for reform made in England, New Zealand, Trinidad and Tobago, and the United States.

The initial research for the project was done by Professor A. H. Oosterhoff, of the Faculty of Law, University of Western Ontario. Considerable progress has been made during the past year in the writing of the final Report. On two occasions, however, work was interrupted as a result of the priority accorded to the completion of the Commission's *Report on Compensation for Personal Injuries and Death*, and its *Report on Timesharing*. It is hoped that the final Report will be submitted during the coming year.

4. *The Law of Standing*

The Law of Standing Project is concerned with the question whether increased access to the courts should be granted to private individuals wishing to litigate in the public interest.

Research for the project was carried out initially by Andrew Roman, Esq., of the Ontario Bar, and subsequently under the direction of Professor W. A. Bogart, of the Faculty of Law, University of Windsor. The Commission has made all policy decisions arising out of this research, and the writing of the final Report has commenced. Unfortunately, due to staff turnover during the past year and the need to complete other projects, progress has been slow. The Commission has decided to accord top priority to completion of the *Report on the Law of Standing* during the coming fiscal year.

5. *Land Held Subject to French Title*

This project, directed by R. E. Priddle, Esq., Q.C., former Director of the Legal and Survey Standards Branch, Ministry of Consumer and Commercial Relations, was concerned with conveyancing problems that arise in connection with land, including land held subject to French title, in respect of which there is no Crown patent. A working paper prepared by the Project Director was considered by the Commission in November, 1986.

Due to other commitments, writing of the Final Report had been delayed this year. Because the Commission's recommendations were few, and in order to facilitate their early implementation, the Commission decided not to publish a Report on this subject, and instead forwarded the working paper, together with the Commission's recommendations, directly to the Registration Division of the Ministry of Consumer and Commercial Relations. We have been advised by the Real Property Registration Branch of that Division that it intends to incorporate the Commission's recommendations into its legislative program, currently being developed, for comprehensive improvements to land registration in Ontario.

6. *Remedies for Wrongful Interference with Goods*

This project examines recaption of chattels, the specific relief remedies of replevin and detinue, and damage remedies such as trespass, conversion and interference with a reversionary interest. The project is directed by joint

Project Directors, Professor Ralph L. Simmonds, Associate Dean of the Faculty of Law, McGill University, and Professor George R. Stewart, of the Faculty of Law, University of Windsor.

Except for the preparation of the final Report, all stages of the project are complete. Unfortunately, it has been necessary during the past year to defer the writing of the final Report, and it now appears, in light of current commitments and priorities, that publication of a Report will not be possible in the foreseeable future. Accordingly, in order to permit the early publication of the research generated by the project, the Commission has decided not to issue a formal *Report on Remedies for Wrongful Interference with Goods*. Rather, the Commission intends to publish a Study Paper, under the names of the joint Project Directors, that will reflect the research and set out the Project Directors' proposals for reform of the law.

7. *Liability of the Crown*

This project is being directed by Professor P. W. Hogg, of Osgoode Hall Law School, York University.

The project, which was commenced in the spring of 1986, examines the legal liability of the Crown in right of Ontario. The primary focus of the project is the *Proceedings Against the Crown Act*, which provides the existing statutory framework for proceedings against the provincial Crown, dealing with both procedural and substantive law. The main purposes of the project are to simplify the law, to make it fairer to both Crown and subject, and to bring it into conformity with the *Canadian Charter of Rights and Freedoms*.

The past year has witnessed the completion of the major portion of the research planned for the project. This research was considered by an Advisory Board constituted under the Chairmanship of the Project Director and consisting of members of the judiciary and the practising profession, representatives of government, and academic experts.

During the coming year, the Advisory Committee will meet to consider four further research papers. The Project Director's Report to the Commission, containing recommendations for reform of the law, is expected in the autumn of 1988. It is anticipated that the Commission will publish the final Report in 1989.

8. *Exemplary Damages*

In March, 1988, the Commission added to its program a project dealing with Exemplary Damages. The project, which will extend over a two year period, will consider whether, and to what extent, exemplary or "punitive" damages serve a rational purpose. Professor Bruce Feldthusen, of the Faculty of Law, University of Western Ontario, has been appointed Project Director, and a research design, proposed by Professor Feldthusen, has been approved by the Commission.

A Research Team has been assembled and research papers commissioned on the following topics: (1) exemplary damages as punishment, including the potential problems of double jeopardy and loss of procedural safeguards caused by effecting punishment by means of the civil, as opposed to the criminal, law; (2) exemplary damages as a means of deterring misconduct intended to make a profit; and (3) exemplary damages as an incentive to litigate particular claims. In addition, a fourth study will gather empirical data concerning exemplary damages—how often they are claimed and awarded, in what amounts and in what types of case, and their effect on settlement.

It is anticipated that the research generated by the project will be reviewed by an Advisory Board of experts before being presented to the Commission for consideration.

FUTURE PROGRAM

During the period under review, three Reports, dealing with Compensation for Personal Injuries and Death, Contribution Among Wrongdoers and Contributory Negligence, and Timesharing, were submitted to the Attorney General. In the coming year, priority will be given to the completion of three further projects, on the Law of Standing, Administration of Estates of Deceased Persons, and Positive and Restrictive Covenants Affecting Freehold Land.

In light of the completion, or anticipated completion, of the abovementioned projects, the Commission has recently engaged in a comprehensive review of its program with a view to undertaking new studies. This process has resulted in the addition to the program of the Exemplary Damages Project. In addition, the Commission is considering seriously initiatives in the areas of administrative justice, judicial appointments to the Supreme Court of Canada under the Meech Lake Accord, and human tissue donation. Other possible fields of study include alternative dispute resolution mechanisms, natural death legislation, and provincial aspects of criminal law. As always, the Commission is open to suggestions concerning areas of the law in need of reform.

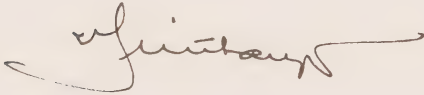
GENERAL ACTIVITIES AND ACKNOWLEDGMENTS

Attached to this Report are five Appendices relating to the activities and staff of the Commission and to events of importance during the past year. Appendix A records our sentiments on the passing of the Honourable R. A. Bell. Appendix B deals with the activities of the Chairman, Vice Chairman, and members of the legal staff during the period under review. Appendix C lists the visitors to the Commission during the year. Appendix D contains a list of Reports prepared and submitted by the Commission since its inception in 1964, together with a table indicating the extent to which legislation concerning its proposals has been enacted. Appendix E contains a list of the officers and permanent staff of the Commission.

The Commission regrets the loss during the past year of Marilyn R. Leitman, Legal Research Officer, who left to join the Office of Legislative Counsel. We wish her success in her new position. To Lise Hendlitz, who joined the Commission as a member of the legal staff, we extend a warm welcome. We wish to thank our Administrative Officer, Ms. Anne McGarrigle, and the administrative staff, for their cooperation and efforts on our behalf.

May we also express our thanks and appreciation to you, Mr. Attorney, and to the officers of your Ministry, for the interest and assistance afforded us in our endeavours.

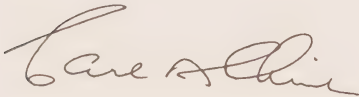
All of which is respectfully submitted,



James R. Breithaupt
Chairman



H. Allan Leal
Vice Chairman



Earl A. Cherniak
Commissioner



J. Robert S. Prichard
Commissioner



Margaret A. Ross
Commissioner

March 31, 1988

APPENDIX A

TESTIMONIAL TO THE HONOURABLE RICHARD ALBERT BELL, PC, QC, LSM, LLD

Extract from the Minutes of the Ontario Law Reform Commission,
April 10 and 11, 1988.

The Commission was greatly saddened to learn of the death, on March 20, 1988, of our former colleague and friend, the Honourable R. A. Bell, PC, QC, LSM, LLD.

He was appointed to the Commission, as one of its founding members, on November 12, 1964, and served with great learning, energy and distinction until his retirement on June 30, 1986. That period represents twenty-two years, or half a professional lifetime, devoted to the cause of law reform. It would be difficult to overstate how much is owed to him and his work in the renewing and restructuring of our laws and socio-legal system for the betterment of the people of this jurisdiction and beyond. *Si monumentum requiris circumspice* — if it is a monument you seek look about you!

Honoured in his lifetime by his legal peers, among others, as the first recipient of the County of Carleton Law Association Medal and the Law Society Medal, he died respected by all. We, his colleagues, express our thanks and gratitude for a life so richly shared and wish to take this opportunity to convey our deepest sympathy to his wife, Ruth, and his daughter, Madam Justice Judith Oyen.

APPENDIX B

ACTIVITIES OF THE CHAIRMAN, VICE CHAIRMAN, AND MEMBERS OF THE LEGAL STAFF

James R. Breithaupt, Chairman

April 13, 1987	Spoke on CFTR noon hour program on the Commission's <i>Report on Human Artificial Reproduction and Related Matters</i> .
April 15, 1987	Attended the Canadian Bar Association (Ontario) Law Day '87 Reception and Dinner, Toronto.
May 22, 1987	Attended the 1987 Conference for Women in Management and the Legal Profession, sponsored by the Employment Equity Branch, Ministry of the Attorney General, Toronto.
June 2, 1987	Attended the Canadian Institute for the Administration of Justice Seminar for Administrative Tribunals, Hilton Harbour Castle Hotel, Toronto.
August 8-14, 1987	As a Commissioner for Ontario, attended the Annual Meeting of the Uniform Law Conference of Canada in Victoria, British Columbia.
August 14, 1987	Attended the Annual Meeting of the Law Reform Conference of Canada in Victoria, British Columbia, and was elected President of the Conference for 1987-88.
August 22-27, 1987	As a member of National Council, attended the Annual Meeting of the Canadian Bar Association in Ottawa, Ontario.
September 30, 1987	Visited the Faculty of Law, University of Western Ontario, and spoke to the students and faculty on the work of the Commission.
October 16-17, 1987	Attended, with Counsel, the Seventeenth Annual Workshop on Commercial and Consumer Law, sponsored by the Commercial and Consumer Law Section of the Canadian Association of Law Teachers; Osgoode Hall Law School; and the Law Faculties of McGill, Queen's and Toronto Universities. Two sessions were devoted to the discussion of various aspects of the Commission's <i>Report on Amendment of the Law of Contract</i> .
November 20-21, 1987	Guest speaker at a Conference on Law Reform, sponsored by lawyers and community legal workers from the Southwest Association of Legal Clinics, in Kitchener, Ontario.

November 23, 1987	Speaker to a delegation from the State Council Bureau of Legislative Affairs, People's Republic of China, who were visiting the Ontario Legislature. The Chairman and Vice Chairman represented the Commission at a luncheon for the delegation given by the Speaker of the Ontario Legislature.
November 25, 1987	Attended a Conference sponsored by the Ontario Energy Board on the topic "Judicial Review by the Courts of Administrative Board Decisions", in Toronto.
December 7, 1987	Visited the Faculty of Law, University of Toronto, with Dean J. Robert S. Prichard, Commissioner, and discussed law reform issues with the faculty.
December 11, 1987	Attended and gave his annual report to the Council meeting of the Canadian Bar Association (Ontario), in Toronto.
December 17, 1987	Visited Mayfield Secondary School in Brampton, and spoke to a class of law students about the work of the Commission.
January 12, 1988	Visited Queen's University, Kingston, and spoke to the law students and faculty about the work of the Commission.
January 13, 1988	Visited the University of Ottawa, Common Law Section, Faculty of Law, with Mrs. Margaret A. Ross, Commissioner, and spoke to the law students and faculty about the work of the Commission.
January 14, 1988	Guest speaker to a dinner meeting of the Executive of the Health Law Section of the Canadian Bar Association (Ontario) at the Albany Club, Toronto.
January 20, 1988	Guest speaker to the John White Society—"A Lecture and Seminar on Law Reform"—Osgoode Hall Law School, York University, and met afterwards with faculty members.
January 27, 1988	Guest speaker to 200 at a breakfast seminar sponsored by the Ontario Mortgage Brokers Association, to discuss the Commission's <i>Report on the Law of Mortgages</i> .
February 11, 1988	Visited the Faculty of Law, University of Windsor, and spoke to the students and faculty on the work of the Commission.
February 15 & 18, 1988	Together with the Vice Chairman, Counsel and members of the legal staff, met with Dean John H. Farrar, LL.M., Ph.D., and Mr. Mark O'Regan from

New Zealand, with respect to the Ontario scheme for registration of personal property security interests. Joined Messrs. Farrar and O'Regan in consultations with Mr. John T. Burnett, QC, Senior Vice President and Legal Counsel, Royal Bank of Canada, in Toronto.

February 26-
March 2, 1988

Attended Executive meetings of the Uniform Law Conference of Canada, and the Mid-Winter Meeting of the National Council of the Canadian Bar Association, in St. John, New Brunswick.

March 9, 1988

Participated in consultation sessions on Correctional Law Review, sponsored by the Solicitor General of Canada, in Toronto.

H. Allan Leal, Vice Chairman

April 6, 1987

Delivered paper on The Hague Convention of Civil Aspects of International Child Abduction to Annual Conference of the International Social Service Organization, Geneva, Switzerland.

June 9, 1987

Presented paper on Family Law Reform at Chedoke Hospital Family Law Clinic, Hamilton, Ontario.

June 16, 1987

Presented paper on Professional Organizations to Canadian Association of Physicists' Annual Meeting, University of Toronto.

August 4, 1987

Met with Mr. Geoff Simmons of the Ontario Architects Association to discuss the developments in the Professional Organizations Committee Report leading to the enactment of a new organic statute for the architects and engineering professions.

January 4, 1988

Delivered paper on Capital Punishment to law class, Westdale Secondary Collegiate, Hamilton, Ontario.

March 2, 1988

Presented paper to the Real Property Section of the Canadian Bar Association (Ontario) on the Commission's *Report on the Law of Mortgages*. This presentation was recorded and is available to the profession on cassette from the CBAO office.

March 25, 1988

Presented paper on Human Artificial Insemination and In Vitro Fertilization to Seminar, Department of Philosophy, McMaster University, Hamilton, Ontario.

- March 28, 1988 Presented paper on Civil Disobedience to the Philosophy Club, St. Michael's College, University of Toronto.
- March 31, 1988 Interview with Mr. Peter Riches respecting History of Family Law Reform in Ontario.

M. A. Springman, Senior Legal Research Officer

- October 24, 1987 Panelist at The Law Union of Ontario, 14th Annual Conference, "Womb for Rent: Developing a Progressive Position on Surrogate Motherhood".
- March 3, 1988 Speaker at Glendon College (York University), on the Ontario Law Reform Commission.

L. M. Fox, Legal Research Officer

- November 5, 1987 Speaker, Toronto General Hospital Lecture Series, "Legal Issues of Infertility".

APPENDIX C

VISITORS TO THE COMMISSION

1987

- April 13-16 Mr. Anthony A. Lucky, Corporate Secretary and In-House Counsel, The Royal Bank of Trinidad and Tobago Limited.
- April 15 Professor Grant Hammond, Director of the Alberta Institute of Law Research and Reform.
- December 29-30 The Honourable Mr. Justice Anthony A. Lucky, Judge of the Supreme Court of Trinidad and Tobago.

1988

- February 15 Professor John H. Farrar, LL.M., Ph.D., Dean, School of Law, University of Canterbury, Barrister of the High Court of New Zealand; and Mr. Mark O'Regan, Barrister; regarding their study for the Law Commission of New Zealand of the law relating to chattels securities and company charges.
- March 4 Professor Margaret Vennell, senior lecturer in law at the Faculty of Law, University of Auckland, and a member of the Accident Compensation Commission in New Zealand.

APPENDIX D

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
1. Report No. 1 [The Rule Against Perpetuities]	February 1, 1965	<i>The Perpetuities Act, 1966, S.O. 1966, c. 113</i>
2. Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	March 1, 1966	<i>do.</i>
3. Report No. 2 [The Wages Act: Assignment of Wages]	March 3, 1965	<i>The Wages Amendment Act, 1968, S.O. 1968, c. 142</i>
4. Report No. 3 on Personal Property Security Legislation	May 28, 1965	<i>The Personal Property Security Act, 1967, S.O. 1967, c. 72</i>
5. Report No. 3A on Personal Property Security Legislation	May 18, 1966	<i>do.</i>
6. Report on The Evidence Act: Admissibility of Business Records	February 16, 1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51, s. 1</i>
7. Report on The Mechanics' Lien Act	February 22, 1966	<i>The Mechanics' Lien Act, 1968-69, S.O. 1968-69, c. 65</i>
8. Supplementary Report on The Mechanics' Lien Act	May 26, 1967	<i>do.</i>
9. Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	May 30, 1966	See <i>The Mechanics' Lien Amendment Act, 1975, S.O. 1975, c. 43</i> <i>The Ministry of Transportation and Communications Creditors Payment Act, 1975, S.O. 1975, c. 44</i> <i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>
10. Report on The Execution Act: Exemption of Goods from Seizure	December 9, 1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>
11. Report on The Law of Condominium	March 6, 1967	<i>The Condominium Act, 1967, S.O. 1967, c. 13</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
12. Report on the Basis for Compensation on Expropriation	September 21, 1967	<i>The Expropriations Act, 1968-69</i> , S.O. 1968-69, c. 36
13. Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	January 8, 1968	<i>The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968</i> , S.O. 1968, c. 120
14. Annual Report 1967	January 15, 1968	Not applicable
15. Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	January 19, 1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
16. Report on the Proposed Adoption in Ontario of The Uniform Wills Act	February 5, 1968	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act, 1978</i> , S.O. 1978, c. 8, s. 1
17. Report on The Protection of Privacy in Ontario	September 10, 1968	See <i>The Consumer Reporting Act, 1973</i> , S.O. 1973, c. 97
18. Report on Section 183 of The Insurance Act	October 3, 1968	—
19. Report on Trade Sale of New Houses	October 4, 1968	See <i>The Ontario New Home Warranties Plan Act, 1976</i> , S.O. 1976, c. 52
20. Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	December 10, 1968	<i>The Landlord and Tenant Amendment Act, 1968-69</i> , S.O. 1968-69, c. 58
21. Report on Limitation of Actions	February 3, 1969	See <i>The Highway Traffic Amendment Act (No. 2), 1975</i> , S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act, 1975</i> , S.O. 1975, c. 38 <i>The Trustee Amendment Act, 1975</i> , S.O. 1975, c. 39
22. Second Annual Report 1968	April 7, 1969	Not applicable
23. Report on the Age of Majority and Related Matters	June 3, 1969	<i>The Age of Majority and Accountability Act, 1971</i> , S.O. 1971, c. 98

Title	Date of Report	Original Legislation Concerning Commission Proposals
24. Report on the Status of Adopted Children	June 3, 1969	<i>The Child Welfare Amendment Act, 1970</i> , S.O. 1970, c. 96, s. 23
25. Report on Family Law, Part I: Torts	November 4, 1969	<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
26. Report on Section 20 of The Mortgages Act	March 12, 1970	<i>The Mortgages Amendment Act, 1970</i> , S.O. 1970, c. 54, s. 1
27. Report on Family Law, Part II: Marriage	April 6, 1970	<i>The Civil Rights Statute Law Amendment Act, 1971</i> , S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act, 1977</i> , S.O. 1977, c. 42
28. Third Annual Report 1969	April 20, 1970	Not applicable
29. Report on Actions Against Representatives of Deceased Persons	November 30, 1970	<i>The Trustee Amendment Act, 1971</i> , S.O. 1971, c. 32, s. 2
30. Report on the Coroner System in Ontario	January 25, 1971	<i>The Coroners Act, 1972</i> , S.O. 1972, c. 98
31. Report on Sunday Observance Legislation	February 26, 1971	<i>The Retail Business Holidays Act, 1975</i> , S.O. 1975 (2nd Session), c. 9 <i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 134
32. Report on Land Registration	March 23, 1971	See <i>The Corporations Tax Amendment Act (No. 2)</i> , 1979, S.O. 1979, c. 89 <i>Land Registration Reform Act, 1984</i> , S.O. 1984, c. 32
33. Fourth Annual Report 1970	March 31, 1971	Not applicable
34. Report on The Change of Name Act	May 31, 1971	<i>The Change of Name Amendment Act, 1972</i> , S.O. 1972, c. 44 <i>Change of Name Act, 1986</i> , S.O. 1986, c. 7
35. Report on The Mortgages Act, Section 16	June 18, 1971	—
36. Report on Development Control	September 28, 1971	<i>The Planning Amendment Act, 1973</i> , S.O. 1973, c. 168, s. 10

Title	Date of Report	Original Legislation Concerning Commission Proposals
37. Report on Powers of Attorney	January 11, 1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i> <i>Powers of Attorney Amendment Act, 1983, S.O. 1983, c. 74</i> <i>Mental Health Amendment Act, 1983, S.O. 1983, c. 75</i>
38. Report on Occupiers' Liability	January 11, 1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
39. Report on Consumer Warranties and Guarantees in the Sale of Goods	March 31, 1972	—
40. Report on Review of Part IV of The Landlord and Tenant Act	March 31, 1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
41. Fifth Annual Report 1971	March 31, 1972	Not applicable
42. Report on the Non-Possessory Repairman's Lien	October 4, 1972	—
43. Report on the Administration of Ontario Courts, Part I	February 26, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i> <i>Courts of Justice Act, 1984, S.O. 1984, c. 11, ss. 19 and 25</i>
44. Sixth Annual Report 1972	March 31, 1973	Not applicable
45. Report on the Administration of Ontario Courts, Part II	May 23, 1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
46. Report on Family Law, Part III: Children	September 25, 1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i> <i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Children's Law Reform Act, 1977</i> , S.O. 1977, c. 41 (partial implementation)
		See <i>Children's Law Reform Amendment Act, 1982</i> , S.O. 1982, c. 20
47. Report on The Solicitors Act	September 28, 1973	<i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 214(6)
48. Report on Motor Vehicle Accident Compensation	November 6, 1973	—
49. Report on the Administration of Ontario Courts, Part III	December 17, 1973	<i>The Judicature Amendment Act, 1975</i> , S.O. 1975, c. 30 (partial implementation)
		See <i>The Administration of Courts Project Act, 1975</i> , S.O. 1975, c. 31
		<i>The Small Claims Courts Amendment Act, 1977</i> , S.O. 1977, c. 52 (partial implementation)
50. Report on Family Law, Part IV: Family Property Law	February 8, 1974	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 (partial implementation)
		<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
		<i>Family Law Act, 1986</i> , S.O. 1986, c. 4 (partial implementation)
		See <i>The Land Titles Amendment Act, 1978</i> , S.O. 1978, c. 7
		<i>The Registry Amendment Act, 1978</i> , S.O. 1978, c. 8

Title	Date of Report	Original Legislation Concerning Commission Proposals
51. Report on Family Law, Part V: Family Courts	February 8, 1974	See <i>The Unified Family Court Act, 1976</i> , S.O. 1976, c. 85 <i>The Children's Probation Act, 1978</i> , S.O. 1978, c. 41 (partial implementation)
52. Seventh Annual Report 1973	May 6, 1974	Not applicable
53. Report on the International Convention Providing a Uniform Law on the Form of the International Will	July 3, 1974	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40, s. 42
54. Eighth Annual Report 1974	March 31, 1975	Not applicable
55. Report on Family Law, Part VI: Support Obligations	April 18, 1975	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 (partial implementation) <i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2
56. Report on Mortmain, Charitable Uses and Religious Institutions	February 27, 1976	<i>The Religious Organizations' Lands Act, 1979</i> , S.O. 1979, c. 45 <i>The Anglican Church of Canada Act, 1979</i> , S.O. 1979, c. 46 <i>The Registry Amendment Act, 1979</i> , S.O. 1979, c. 94, s. 17 <i>Charities Accounting Amendment Act, 1982</i> , S.O. 1982, c. 11 <i>Mortmain and Charitable Uses Repeal Act, 1982</i> , S.O. 1982, c. 12, s. 1(1) <i>The Residential Tenancies Act, 1979</i> , S.O. 1979, c. 78 (partial implementation)
57. Report on Landlord and Tenant Law	March 15, 1976	<i>The Residential Tenancies Act, 1979</i> , S.O. 1979, c. 78 (partial implementation)
58. Report on the Law of Evidence	March 29, 1976	—
59. Ninth Annual Report 1975	March 31, 1976	Not applicable
60. Report on Changes of Name	August 16, 1976	<i>The Change of Name Amendment Act, 1978</i> , S.O. 1978, c. 28

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Vital Statistics Amendment Act, 1978</i> , S.O. 1978, c. 81, s. 1 (partial implementation)
		<i>Change of Name Act, 1986</i> , S.O. 1986, c. 7 (partial implementation)
		<i>Vital Statistics Amendment Act, 1986</i> , S.O. 1986, c. 9 (partial implementation)
61. Report on the Impact of Divorce on Existing Wills	February 28, 1977	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40, s. 17(2)
62. Tenth Annual Report 1976	March 31, 1977	Not applicable
63. Eleventh Annual Report 1977	March 31, 1978	Not applicable
64. Report on Sale of Goods	March 30, 1979	—
65. Twelfth Annual Report 1978	March 30, 1979	Not applicable
66. Report on Products Liability	November 16, 1979	—
67. Thirteenth Annual Report 1979	March 31, 1980	Not applicable
68. Report on the Enforcement of Judgment Debts and Related Matters, Part I	February 20, 1981	—
69. Report on the Enforcement of Judgment Debts and Related Matters, Part II	March 31, 1981	<i>Wages Amendment Act, 1983</i> , S.O. 1983, c. 68 (partial implementation) <i>Proceedings Against the Crown Amendment Act, 1983</i> , S.O. 1983, c. 88
		<i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 177 (partial implementation) Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)
70. Report on the Enforcement of Judgment Debts and Related Matters, Part III	March 31, 1981	Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)
71. Fourteenth Annual Report 1980-81	March 31, 1981	Not applicable
72. Report on Witnesses Before Legislative Committees	September 11, 1981	—
73. Report on Class Actions	March 31, 1982	—

	Title	Date of Report	Original Legislation Concerning Commission Proposals
74.	Fifteenth Annual Report 1981-82	March 31, 1982	Not applicable
75.	Report on the Enforcement of Judgment Debts and Related Matters, Part IV	March 31, 1983	—
76.	Report on the Enforcement of Judgment Debts and Related Matters, Part V	March 31, 1983	<i>Creditors' Relief Amendment Act, 1985</i> , S.O. 1985, c. 1 (partial implementation)
77.	Report on Powers of Entry	March 31, 1983	—
78.	Sixteenth Annual Report 1982-83	March 31, 1983	Not applicable
79.	Report on the Law of Trusts	March 30, 1984	—
80.	Seventeenth Annual Report 1983-84	March 30, 1984	Not applicable
81.	Report on Human Artificial Reproduction and Related Matters	March 15, 1985	—
82.	Twentieth Anniversary Report 1984-85	September 1, 1985	Not applicable
83.	Twenty-First Annual Report 1985-86	March 31, 1986	Not applicable
84.	Report on Political Activity, Public Comment and Disclosure by Crown Employees	June 27, 1986	—
85.	Report on Amendment of the Law of Contract	January 15, 1987	—
86.	Report on the Law of Mortgages	March 31, 1987	—
87.	Twenty-Second Annual Report 1986-87	March 31, 1987	Not applicable
88.	Report on Compensation for Personal Injuries and Death	November 10, 1987	—
89.	Report on Contribution Among Wrongdoers and Contributory Negligence	March 23, 1988	—
90.	Report on Timesharing	March 31, 1988	—
91.	Twenty-Third Annual Report 1987-88	March 31, 1988	Not applicable

Many of the Commission's earlier Reports are no longer in print. Those that are still in print may be ordered from Publications Services, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada M7A 1N8. Telephone 965-6015. Toll free long distance 1-800-268-7540; in area code 807, 0-Zenith 67200.

APPENDIX E

OFFICERS AND PERMANENT STAFF ONTARIO LAW REFORM COMMISSION

Chairman	James R. Breithaupt, CStJ, CD, QC, MA, LLB
Vice Chairman	H. Allan Leal, OC, QC, LSM, LLM, LL.D, DCL
Commissioners	Earl A. Cherniak, QC J. Robert S. Prichard, MBA, LLM Margaret A. Ross, BA (Hon.), LLB
Counsel	M. Patricia Richardson, MA, LLB
Secretary and Administrative Officer	Anne McGarrigle, LLB
Senior Legal Research Officer	M. A. Springman, MA, MSc, LLB
Legal Research Officers	Larry M. Fox, LLB Judith A. Bellis, BA, LLB J. J. Morrison, BA (Hon.), LLM Lise S. C. Hendlisz, MA, BCL, LLB
Administrative Assistant	Beverley G. Woodley
Secretary to Chairman and Vice Chairman	Stephanie Hlynka
Librarian	Elizabeth N. Page, BA
Secretary to Counsel	D. M. Halyburton
Secretary to Administrative Officer	Mary Rose Betinvieh, BAA
Secretaries to Legal Research Officers	Cora Calixterio Sharon Nagasaka
Receptionist	Mary M. O'Hara

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1989/90

1991 ONTARIO LAW REFORM COMMISSION REPORT

ONTARIO LAW REFORM COMMISSION

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Ontario

1991



1991 ONTARIO LAW REFORM COMMISSION REPORT

ONTARIO LAW REFORM COMMISSION



1991

The Ontario Law Reform Commission was established on May 8, 1964 by the *Ontario Law Reform Commission Act*. The Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General.

The Commissioners are:

Chair

Rosalie S. Abella, BA, LLB (from March 20, 1989)

Vice-Chair

Richard E.B. Simeon, Ph.D (from April 14, 1989)

Commissioners

Earl A. Cherniak, QC, BA, LLB

J. Robert S. Prichard, MBA, LLM (to July 31, 1990)

John D. McCamus, MA, LLM (from August 1, 1990)

Margaret A. Ross, BA (Hon), LLB

The Commission's office is located on the Eleventh Floor at 720 Bay Street, Toronto, Ontario, Canada, M5G 2K1. Telephone (416) 326-4200. FAX (416) 326-4693.

This Report is also available in French.

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**Ontario
Law Reform
Commission**

To The Honourable Howard Hampton
Attorney General for Ontario

Dear Attorney General:

We have the honour to present the Report of the Ontario Law Reform Commission, for the period ending March 31, 1991, in accordance with section 2(3) of the *Ontario Law Reform Commission Act*, R.S.O. 1980.

Rosalie S. Abella
Chair

Richard E. B. Simeon
Vice Chair

Earl A. Cherniak
Commissioner

John D. McCamus
Commissioner

Margaret A. Ross
Commissioner

INTRODUCTION

In 1964, Ontario established the first Law Reform Commission in the Commonwealth. In the next decade, governments across Canada and in several other countries followed Ontario's example. A little over 25 years later, these Commissions are solidly ensconced as respected partners in the justice systems of provinces and countries all over the world. Their work constitutes a unique contribution to legal policy, and is widely respected for its intellectual and analytical rigour.

In Ontario alone, one hundred reports have been produced. Seventy five have been partially or wholly implemented and another six are currently being examined by government for possible implementation. But whether or not a Report gets statutory endorsement is by no means the only measure of its value. Implementation is a function of many variables, only one of which is the cogency of the recommendations. Commissions make recommendations based on analysis of law and policy which the incumbent government may not share at any given moment. Far from taking away from the merit either of the recommendations or the government's response, it merely demonstrates that in public policy, the "urgent" often overwhelms the "important", and the duty to decide which is which belongs to governments.

And while governments decide on the timeliness of implementation, Law Reform Commissions identify issues and generate ideas leaving it to governments to choose how and when to act.

Law Reform Commissioners have a unique vantage point as independent legal policy think tanks. They wander the landscape of public issues, consulting with its occupants, and sift through their articulated desires for change, clarification, modernization, or access to law and its institutions. Some of these concerns find their way into comprehensive commission reports whose contents in turn may shape legislation or judicial decisions or academic criticism or editorial comments or speeches or policy submissions or private conversations. If they do no more than inspire and inform intelligent debate on matters of legal policy, however, whether or not they are translated into new legal doctrines, Reports of Law Reform Commissions have fulfilled an important function no other public institution has had the mandate or exclusive duty to perform.

That is why the Ontario Law Reform Commission has traditionally taken the time to produce the kind of Report time cannot diminish. It has also recognized that different kinds of Reports can, without diminished quality,

supplement the traditional exhaustive Reports the Commission has produced and will continue to produce with pride.

To that end, the Commission has begun to develop a range in the kinds of Reports it issues, in order to respond to the variety of concerns raised by the wider communities it has consulted.

Collections of articles on a given topic, Roundtable discussions leading to Discussion Reports, and Discussion Papers by individuals making recommendations in discrete policy areas, have been added to the Commission's supply of law reform products. An Advisory Board, whose members are listed in Appendix D, was created by the Commission in 1989 to provide a small but representative consultative group from among the Commission's constituencies in the legal, academic, and public spheres. Chief Justice Edward D. Bayda of the Saskatchewan Court of Appeal and Professor Peter Hogg of York University were appointed Visiting Scholars to the Commission to assist in our discussions. In addition, as the list of groups and organizations in Appendix E shows, the Commission continues to consult widely not only to learn what issues should be addressed, but to learn what policy recommendations the people most directly affected feel ought to be made once an issue is identified for reform.

The Commission's agenda has never been fuller and this represents a challenge both inevitable and welcome. It can only hope that in 25 years when an assessment is made of the Commission's first 50 years, the public tribute will be as glowing for the last 25 years as for the first.

A handwritten signature in dark ink, reading "R. Abella". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Rosalie S. Abella
Chair

THE PROGRAM

A. COMPLETED PROJECTS

The Law of Standing (1989)

In its *Report on the Law of Standing*, the Ontario Law Reform Commission proposed a new approach to standing to sue in Ontario, expanding the basis on which individuals would have access to the courts to raise important issues of public interest.

The Project Director was Professor W. A. Bogart, of the Faculty of Law, University of Windsor. All members of the Commission's legal staff were involved in the project, with primary responsibility falling on Larry M. Fox and Marilyn R. Leitman.

In chapter 2 of the report, the present Ontario law of standing in civil proceedings is reviewed. Chapter 3 examines the deficiencies in the law and the case for reform. Chapter 4 sets out the Commission's proposals for reform of the law of standing, and chapter 5 contains an examination of intervention in civil proceedings. The question of costs in relation to both standing and intervention is dealt with in chapter 6. Finally, Appendix 1 sets out the Commission's proposed *Access to Courts Act*, and Appendix 2 discusses reform proposals made in other jurisdictions.

In the Commission's view, fundamental change is required to remedy existing serious deficiencies in the law of standing. Of particular concern is the public nuisance standing rule. Under that rule, in cases of public nuisance or where the public interest or a public right is involved, only the Attorney General may bring proceedings in the courts. Individuals have standing to do so only with the consent of the Attorney General, unless they can show that their own personal, proprietary or pecuniary interest has been affected in a different way from the rest of the public.

The Commission criticizes the public nuisance rule for two reasons. First, where proceedings are brought against the government, the Attorney General is both the person deciding whether the proceeding may be brought and the person responsible for defending the government. Second, requiring an individual to show a unique personal interest, as a condition of being granted standing, restricts access to our courts unduly.

The effect of the public nuisance rule is most significantly felt in the area of environmental law, where it may frustrate efforts by individuals to prevent or halt pollution.

The Supreme Court of Canada has departed from the public nuisance standing rule in constitutional and administrative law. In these contexts, the Attorney General has no control over standing, and individuals need not show that their own personal, proprietary or pecuniary interest has been affected in a way different from the rest of the public. An individual need show only that there is a serious issue as to the legislation's validity, that he or she has a genuine interest as a citizen in the possibility of its invalidity, and that there is no other reasonable and effective manner in which the issue may be brought before a court.

While the Commission lauds the general direction taken by the Supreme Court, it is concerned that the precise nature and application of the test for standing are uncertain.

The Commission therefore recommends that the present provincial law of standing be abolished and replaced by a new *Access to Courts Act*. The main purpose of this Act would be to increase access to the courts by granting standing to individuals, whether or not they have a personal, proprietary or pecuniary interest that has been specially or uniquely affected. The Commission's new approach to the right of individuals to sue in Ontario courts reflects the fact that individuals may be affected by conduct in a way that is not tied to a traditional legal interest.

Under the new Act, a single, more liberal standing rule would apply to all types of civil proceeding, including proceedings brought under the *Judicial Review Procedure Act*. The basic rule would be that every person should be entitled to commence and maintain a legal proceeding unless the court is satisfied that the factors against proceeding outweigh the factors in favour of proceeding.

As part of this fundamental reform, the public nuisance standing rule would be abolished. The Commission specifically recommends that no person should be denied the right to sue simply because that person has no personal, proprietary or pecuniary interest in the proceeding, or has suffered or may suffer injury or harm of the same kind or to the same degree as other persons. The Attorney General would no longer have a right to block access to the courts; however, the existing right of the Attorney General to bring a proceeding would not be limited or affected in any way by the Commission's proposals.

Where a person's right to sue is challenged, the court would be required to consider the following:

- (a) regardless of whether or not the interest of the plaintiff is personal, proprietary or pecuniary,
 - (i) whether another proceeding has been instituted against the same defendant in which the issues include those present in the proceeding that is opposed, if the interests of the plaintiff can be met by intervening in the other proceeding and it is reasonable to expect the plaintiff to do so;
 - (ii) whether to proceed would be unfair to persons affected, but the fact that the outcome may affect a person whose interest is personal, proprietary or pecuniary shall not necessarily be considered unfair; and
 - (iii) whether or not another reasonable and effective method exists to raise the issues that are sought to be litigated; and
- (b) where the interest of the plaintiff is not personal, proprietary or pecuniary,
 - (i) whether the issues raised in the proceeding are trivial, and
 - (ii) the number of persons affected in any way, whether personally or otherwise;

and the court may consider any other factor that the court considers just.

The Commission recommends that the standing provisions in the proposed *Access to Courts Act* be in addition to, and not detract from, any right to bring a proceeding that is conferred by any other Act. The *Access to Courts Act* would co-exist with any other legislation dealing with standing, and a person who does not meet the requirements for standing to sue under other Ontario legislation would be entitled to seek standing under the new Act.

The *Report on the Law of Standing* also considers intervention, that is, the right of a person to participate in proceedings to which that person is not an original party. The Commission is confident that an innovative and flexible use of the present intervention rule, rule 13 of the rules of court, would result from the proposed liberalized standing regime. It therefore recommends that the existing rule 13 should be left to evolve on a case-by-case basis. If, however, rule 13 does not develop in the manner anticipated, the Commission recommends that it be reconsidered.

In the report, much attention is given to the issue of costs. The Commission concludes that without fundamental change to the present law of costs,

its proposals for reform of the law of standing would be ineffective. A person without any personal, proprietary or pecuniary interest in the outcome of a proceeding, or an interest that does not justify the proceeding economically, is not likely to bring a proceeding where there is a risk of paying costs if unsuccessful.

Accordingly, the Commission recommends that in certain circumstances, the court would be prevented from ordering the plaintiff to pay costs to a defendant, except where the conduct is vexatious, frivolous or abusive. Such a rule would apply where the following conditions are met: the proceedings involve issues whose importance extends beyond the immediate interests of the parties involved; the person has no personal, proprietary or pecuniary interest in the outcome of the proceeding, or, if that person has such an interest, it clearly does not justify the proceeding economically; the issues have not previously been determined by a court in a proceeding against the same defendant; and the defendant has a clearly superior capacity to bear the costs of the proceeding.

The Commission recognizes that uncertainty over whether a person will enjoy immunity from costs may itself discourage the initiation of an action where that person has little or no financial interest in the outcome of the proceeding. To meet this difficulty, the Commission further recommends that, at any time in a proceeding, a person may ask the court to make a decision whether that person would be immune from being ordered to pay costs.

As to the costs payable by a client to the client's own lawyer, the Commission recommends that a person with a costs immunity and that person's lawyer should be able to enter into a form of contingency fee agreement, providing for payment to the lawyer only in the event of success in the proceeding. Recognizing the dangers of a conflict of interest for the lawyer under any contingency arrangement, the Commission further recommends that it should not be permissible for the agreement to specify the amount payable in the event of success as a gross sum, percentage, or commission. The agreement may, however, include an amount payable in respect of fees that is reasonable compensation for the risk assumed by the lawyer.

The issue of costs is also considered in connection with intervention. Consistent with its general costs proposals, the Commission recommends that intervenors should enjoy an immunity from costs in certain circumstances, unless the conduct is vexatious, frivolous or abusive. An intervenor would be immune from costs where the following conditions have been met: the proceeding involves issues the importance of which extends beyond the immediate interests of the parties involved; the intervenor has no personal, proprietary or pecuniary interest in the outcome of the proceeding or, if the

intervenor has such an interest, it clearly does not justify the intervention economically; and, the intervenor has contributed significantly to the resolution of the issues. While an intervenor generally may recover costs from another party, an intervenor would not be able to recover costs from a plaintiff who has a costs immunity.

Covenants Affecting Freehold Land (1989)

In the Commission's *Report on Covenants Affecting Freehold Land*, the Commission deals with both positive and restrictive covenants, or obligations, affecting land, other than those between landlord and tenant.

The report is based on a research paper prepared for the Commission by Professor A. H. Oosterhoff, of the Faculty of Law, University of Western Ontario. Jody Morrison, a member of the Commission's legal staff, prepared the final report.

In chapter 2 of the report, the law of covenants in Ontario is examined. Chapter 3 looks at the various approaches to reform, either proposed or adopted, in England, Trinidad and Tobago, New Zealand, and the United States. It also contains a brief discussion of the American law of covenants. The Commission's conclusions and recommendations for reform are set out in chapter 4.

As indicated, the report is concerned with both positive and negative covenants. A positive covenant is one that requires a person to do something on that person's land, whereas a restrictive covenant is one that prohibits a person from doing something on the land. In general, two parcels of land are involved: one that has the burden of the covenant, and one that has the benefit. The burden of a covenant is the duty to perform it, or the liability to be sued upon it, if the covenant is not performed, while the benefit of a covenant is the right to enforce it.

In the report, the Commission identifies two fundamental deficiencies in the law of covenants. As the principal difficulty, the Commission cites the fact that, except in the landlord and tenant context, the burden of a positive covenant does not run with land; that is, it cannot be enforced by the owner of the benefited land against subsequent owners of the burdened land. This rule often operates to defeat the legitimate expectations of the parties. For example, at present, if a person agrees with a neighbour that the neighbour, and those who purchase the neighbour's property in the future, will maintain a common fence or driveway, the obligation will not be binding on future owners of that property. Similarly, where the owners in a property development agree that they and subsequent owners of the various pieces of

property will pay for the maintenance of amenities provided in the development, the obligation will not bind the future owners. In addition, the neighbour in the first example, and the original owners in the second, will remain liable for contraventions of the obligation even after they have sold their property.

The second problem the Commission identifies deals with restrictive covenants. Although both the benefit and the burden of restrictive covenants may run with land, the law in this area is unduly complex and uncertain.

In order to address these deficiencies, two general recommendations are made. First, the Commission concludes that the law should be reformed to permit the burden of a positive covenant to run with land, so that it will be enforceable against subsequent owners of the burdened land. Second, the Commission recommends that the law of restrictive covenants should be reformed to remove the present complexity and uncertainty. These reforms will be accomplished through the creation of a new interest in land, referred to as a "land obligation". The report includes numerous recommendations establishing a comprehensive scheme for the creation and operation of this new interest.

Land obligations will include both positive and restrictive obligations, and will permit both the benefit and the burden of such obligations to run with land. In addition, the benefit of a land obligation will be permitted to exist either as annexed or attached to land (referred to in the report as the "dominant land"), or "in gross", that is, for the personal benefit of the person entitled to enforce it, without the necessity of it being attached to dominant land.

The report recommends that any obligation should be capable of being imposed as a land obligation, including restrictive obligations, positive obligations, reciprocal payment obligations, positive user obligations, and access obligations. Moreover, the Commission concludes that it should be possible to include certain supplementary provisions in the instrument creating a land obligation, and that such provisions should take effect as part of the land obligation.

The Commission recommends that provision should be made for the creation of development schemes, under which land obligations might be imposed and become binding upon, and mutually enforceable by, the owners of the individual units comprising the scheme. A development scheme will be able to provide for different obligations to be imposed on different units, or for some units to be free from obligations. Moreover, a development scheme will be able to provide for the variation or extinguishment of any

land obligation imposed under the scheme, and for any other matter desired by the parties.

The Commission concludes that it would be improper to impose the burden of certain types of land obligation on all persons who may have an interest in the land burdened by the obligation (referred to in the report as the “servient land”). The report therefore recommends that, subject to the exception noted below, restrictive and access obligations should be binding upon everyone who has an interest in, or who occupies, all or part of the servient land. Other land obligations, on the other hand, should be binding only on those persons who have certain substantial interests in the servient land. In accordance with the general rules of priority, however, the report recommends that no one should be bound by a land obligation if that person has priority over it by virtue of a prior registered interest. Finally, unless a contrary intention appears expressly in the creating instrument, the Commission concludes that the original maker of the land obligation should be discharged of the burden once the maker has parted with all interests in the land.

The report recommends that all persons bound by positive obligations, reciprocal payment obligations, and positive user obligations should be liable for a contravention of such obligations. By contrast, only the person bound by a restrictive or access obligation who actually committed the breach should be liable. However, where a person bound by a land obligation is a subsequent mortgagee, chargee, or holder of other security, the person should be liable for a breach of the land obligation only if that person was in possession of the servient land at the time of the breach. The parties will be permitted to vary the above rules for the purpose of restricting the circumstances in which a person may be held liable for the contravention of a land obligation. Finally, the report recommends that a right of contribution should exist among all persons who are liable for breach of a positive user obligation, reciprocal payment obligation, or positive user obligation.

Since land obligations include both positive and restrictive obligations, the Commission concludes that the range of available remedies for breach of a land obligation should include not only injunctions and other equitable relief, but also damages for moneys due under a land obligation, and, subject to the exception noted below, damages for both pecuniary and non-pecuniary kinds of loss. The parties, however, would be free to provide that, on breach of a land obligation, one or more types of liability shall be excluded, either in whole or in part. Moreover, a person will be entitled to a remedy in respect of a contravention only to the extent to which that person is materially prejudiced by the breach.

The Commission makes recommendations regarding a variety of methods by which land obligations and development schemes may be varied or extinguished. The report includes several recommendations respecting the extinguishment of land obligations where all or part of the servient land, and all or part of the dominant land, come into the ownership of the same person. Similarly, the report includes a recommendation respecting the extinguishment of development schemes, where all the units comprising the scheme come into the ownership of the same person. The Commission also concludes that although land obligations and development schemes should be extinguished automatically at the end of a period of forty years, it should be possible to renew a land obligation or development scheme. Moreover, the report recommends that where some, but not all, of the persons bound by or entitled to enforce a land obligation agree in writing to vary the obligation, the variation should be binding not only upon the parties to it, but, provided it is registered on title, also upon subsequent owners and subsequent adverse possessors of all or part of the land.

The report includes numerous recommendations respecting extinguishment and variation of land obligations and development schemes by the court. In this connection, the report recommends that the court should have the power to extinguish or vary any land obligation or development scheme, and that anyone interested in the servient land, including a purchaser under an agreement of purchase and sale, or a person with an option to purchase the land, should have the right to apply to the court for an order extinguishing or varying a land obligation or a development scheme. The Commission concludes that the court should have the power to order the extinguishment or variation of a development scheme or land obligation upon such terms and conditions as it believes to be appropriate, including the right to impose a new or additional obligation upon any person, provided the person consents to undertake the burden. As a condition of the variation or extinguishment of a land obligation, the court will be empowered to direct that the applicant pay compensation to any person bound by the order for any loss or disadvantage the person will suffer as a result of its terms. Finally, the report recommends that the court should be empowered to extinguish or vary a land obligation or development scheme on one or more of nine specific grounds.

With respect to the application of its proposals, the Commission concludes that, subject, to certain exceptions, the existing rules respecting the running of covenants should continue to apply to existing covenants, but should not apply to land obligations created after the proposals take effect. Finally, since the present law of covenants will continue to apply in limited circumstances, the Commission makes several recommendations for reform of that law.

Wrongful Interference with Goods (1989)

This Study Paper was written for the Commission by Professor Ralph L. Simmonds, of the Faculty of Law, McGill University, and Professor George R. Stewart, of the Faculty of Law, University of Windsor, with the assistance of Professor David M. Paciocco, of the Faculty of Law, Common Law Section, University of Ottawa. The Study Paper reflects the research and sets out the recommendations of the authors. For the reasons explained in the Commission's 1987-88 Annual Report, no formal report has been issued by the Commission.

The Study Paper examines critically the remedies available to those persons whose goods, or whose interests in goods, have been wrongfully interfered with by some other person.

Remedies for wrongful interference with goods is one of the most complex areas of law. Much of the law developed at a time when the requirements for commencing legal proceedings were quite different, and more complicated, than today. The subject matter examined in the Study Paper includes old legal causes of action, such as the action of replevin (to recover possession of goods), trespass to goods (which is concerned with the wrongful touching or taking of goods), and detinue (which deals with the wrongful withholding of goods). It also includes some relatively modern developments, such as the tort of conversion (which deals broadly with any dealing with goods in a manner inconsistent with the rights of the person entitled to them), the negligent causing of economic loss, and the tort of interference with a reversionary (or non-possessory) interest. The subject matter also includes the ancient self-help remedy of "recaption" (which is the taking of possession of goods by a person with a right to immediate possession of them), as well as other remedies concerning the recovery of goods.

The authors explore the complexities and deficiencies in the present law of remedies for wrongful interference with goods and conclude that, while radical reform is not necessary, the law needs to be amended by statute. Given the obvious overlap between many of the causes of action described above, and the fact that the rigidity of some of the property torts is essentially anachronistic since the abolition of the old "forms of action", which established rather artificial barriers to pursuing legal remedies, the authors make specific recommendations that seek to rationalize the law in this area. The Study Paper would retain much of the substance of the present law, but would make it more coherent as well as more consistent with the law and practice in closely related fields.

The Study Paper recommends that the law in the area should be dealt with by a statute that provides for a new tort called “wrongful interference with goods”. The new tort includes the present actions of conversion, detain, trespass to goods, injury to a reversionary interest in goods, negligence (if it results in loss or damage to goods) and, where appropriate, damage or loss arising out of breach of contract. In addition, the draft statute contains several provisions that seek to modernize and rationalize the present law. Among the more notable provisions are those that will make the new tort of wrongful interference with goods far less a matter of strict liability, that is, liability in the absence of fault. The draft Act will allow a wrongdoer who is not a merchant to defend a lawsuit by showing that a reasonable mistake was made. In addition, the Act will permit a defendant to argue that the plaintiff’s own actions contributed to the loss, so that any damages ordered to be paid by the defendant should be reduced. It also provides for the right of one wrongdoer to obtain some compensation from other wrongdoers who also caused the loss to the plaintiff.

The recovery of goods will be more readily available in a wider range of fact situations. The draft Act provides for a general right of recovery at all stages in a lawsuit. This general right of recovery will be available even in cases where the claimant does not have an immediate right to possession, so long as no one else with an interest in the goods objects to such recovery.

The draft Act also contains innovative provisions that seek to clarify and control the self-help remedy of recaption, or recovery, of goods. In particular, the risk of, and liability for, injury to the person from whom the goods are sought, or to that person’s property, are placed squarely on the party who is attempting to recover the goods. Furthermore, the right of that party to recover goods from a home is severely restricted in order to avoid volatile confrontations that could lead to personal injury and property damage.

The recommendations made in the Study Paper attempt to create a new, more comprehensive scheme that better serves modern commercial and consumer interests.

Liability of the Crown (1989)

The Ontario Law Reform Commission’s *Report on the Liability of the Crown* is designed to advance three general objectives:

- (1) to make the law fairer to both Crown and citizen;
- (2) to bring the law into conformity with the general principles underlying the *Canadian Charter of Rights and Freedoms*, and

(3) to simplify the law.

The Commission's report was directed and written by Professor Peter W. Hogg, Q.C., of Osgoode Hall Law School, York University. The final report was prepared by Judith Bellis, a member of the Commission's legal staff.

After dealing with several preliminary matters, including the rationale for reform and the historical development of Crown liability (chapter 1), the report considers Crown liability in the fields of tort (chapter 2) and contract (chapter 3). Chapter 4 discusses damages, injunctions, specific performance, declarations, judicial review and *habeas corpus*. Procedural and related issues are dealt with in chapter 5. The remaining portions of the report consider enforcement problems (chapter 6), the presumption of Crown immunity in respect of various statutory provisions (chapter 7) and the position of Crown agencies (chapter 8).

In the *Report on the Liability of the Crown*, the Commission identifies a number of anomalous and unjustified privileges and immunities that continue to be enjoyed by the Crown in its dealings with ordinary persons, despite major reforms in 1963. These various privileges and immunities not only occasionally work injustice in individual cases, they also create unnecessary complications in the law and legal hazards to persons dealing with the Crown.

In the Commission's view, the present law governing liability of the Crown, insofar as it still provides privileges and immunities not enjoyed by ordinary persons, is inconsistent with popular conceptions of government. Crown immunities are particularly contrary to a deeply-held notion that the government and its officials ought to be subject to the same legal rules as private individuals, and should be accountable to injured citizens for its wrongful conduct. A key element of this concept is the fact that the application of ordinary principles of law to government is placed in the hands of the ordinary courts, who are independent of government and therefore capable of being relied upon to award an appropriate remedy to a person who has been injured by unlawful government action.

The Commission observes that these longstanding constitutional notions of the rights of individuals *vis-à-vis* the state have been most recently exemplified, and immeasurably strengthened, by the passage of the *Canadian Charter of Rights and Freedoms* and by the broad and purposive approach that the Supreme Court of Canada has adopted in its interpretation. The Charter is, in that broad sense, the philosophical backdrop against which the reform proposals in the report are made.

In asserting as a general principle that the government and its servants should be subject to the ordinary law, the Commission does not deny that the Crown may require some unique powers and immunities in order to govern effectively. This reality is acknowledged throughout the report. The Commission emphasizes, however, that a long and powerful tradition requires that the scope of such powers and immunities must be carefully defined and should be no broader than is necessary to fulfil the particular policy and purpose for which they have been granted. The reform proposals in the report are intended to replace the current hodge-podge of rules, presumptions, privileges and immunities, largely based on an anachronistic historical rationale, with a rational and carefully designed set of rules appropriate to contemporary notions of government and citizens' rights.

The Commission therefore recommends that a new *Crown Liability Act* should be enacted to implement the reform proposals made in the report. The general and overarching recommendation is that the privileges of the Crown in respect of civil liabilities and civil proceedings should be abolished, and the Crown and its servants and agents should be subject to all the civil liabilities and rules of procedure that are applicable to other persons who are of full age and capacity. This recommendation is intended to apply with respect to all causes of action, including tort, contract, restitution, and breach of trust. The specific implications of this general proposal, and certain limited exceptions to it, are canvassed in succeeding chapters of the report.

The first specific area of Crown liability considered by the Commission is that of tort law. After identifying certain gaps in the direct tortious liability of the Crown, the Commission explains that its general recommendation is intended to encompass all kinds of civil liability, and would accordingly abolish any residual immunities of the Crown in tort. However, the Commission specifically recommends the abolition of any statutory provision that creates a Crown immunity with respect to property that vests by operation of law and without its knowledge.

The Commission next considers certain statutory immunities from civil liability enjoyed by many Crown employees in Ontario. The Commission concludes that ordinary principles of employment law, which allow for indemnification of employees by employers where appropriate, should govern the Crown and its servants or agents as well. The Commission recommends that all statutory immunity clauses should be repealed and replaced by an appropriate scheme of indemnity within two years after the proclamation of the new *Crown Liability Act*.

The report then reviews the current civil liability of judicial and quasi-judicial decision makers. The Commission concludes that there is no principled reason for treating quasi-judicial decision makers differently than judges

with respect to tortious liability, and recommends that every member of a board, commission or tribunal should enjoy the same immunity accorded to superior court judges when performing duties of a judicial nature.

The Commission concludes its discussion of tortious liability of the Crown by recommending the abolition of certain statutory provisions that currently preserve the Crown from vicarious liability with respect to conduct for which it should properly be liable.

In chapter 3, the Commission reviews the contractual liability of the Crown and finds the current law to be generally satisfactory. The earlier recommendations that the Crown should be subject to all the civil liabilities applicable to a private person, and that statutory immunity clauses protecting Crown servants should be abolished, would apply equally to the contractual liability of the Crown. The Commission specifically recommends the abolition of an existing common law doctrine that prohibits the Crown from fettering its discretion by contract.

In chapter 4, dealing with remedies, the Commission indicates that the Crown remains immune from injunction, specific performance, and orders in the nature of mandamus, prohibition, and certiorari under the *Judicial Review Procedure Act*. The Commission concludes that these immunities are unjustified, and recommends their abolition. It is further recommended that the anomalous and unnecessary procedure to obtain declaratory relief against the Attorney General, known as the *Dyson* procedure, should be abolished.

In chapter 5, the Commission deals with a variety of procedural and related matters. First, it considers the common law rule of Crown privilege with respect to disclosure of evidence. The Commission concludes that the current law, as established in *Carey v. The Queen in Right of Ontario*, is generally satisfactory. However, for greater certainty, it recommends that the rule should be expressly included as part of the proposed *Crown Liability Act*. The Commission also recommends the repeal of section 12 of the present *Proceedings Against the Crown Act*, which deals with disclosure and privilege in an incomplete and inappropriate manner.

The Commission then indicates that the current obligation of the Crown to give discovery is limited and unsatisfactory, and recommends that the Crown should be liable to give discovery in the same manner as if the Crown were a corporation. It also concludes that the current statutory prohibition with respect to jury trials against the Crown is unjustified, and recommends its repeal. And finally in this chapter, the Commission reviews the present state of the law relating to special limitation and notice periods in actions involving the Crown. It observes that it has recommended appropriate

reform measures with respect to these matters in its 1969 *Report on Limitation of Actions*, and calls once again for their implementation.

In chapter 6, the report turns to the enforcement of judgments, costs and interest. The Commission reviews the current immunity of the Crown from the enforcement mechanisms of execution and garnishment of debts owing to the Crown by third parties. The Commission concludes that a continuation of these immunities is justified on two grounds: first, such debts are almost invariably paid without recourse to enforcement mechanisms because the Treasurer of Ontario is under a statutory obligation to pay judgment debts; and second, the potentially disruptive effect of any seizure of public property militates strongly against providing such recourse. A recommendation is made, however, that certain residual Crown immunities from garnishment of debts owed by the Crown to a third party judgment debtor should be abolished.

The Commission then discusses the current immunity of the Crown from civil contempt for breach of a court order, and concludes that the historical rationale for that immunity is no longer persuasive. Under the Commission's proposals, the Crown will be liable for civil contempt to the same extent as if the Crown were a corporation. It is further recommended that, where the Crown is found in contempt, the court should direct its order to the minister responsible for the affairs of the particular ministry involved. In appropriate circumstances, an order can also be made against a Crown employee or agent.

As to the issue of costs, the Commission is of the view that the present law governing the liability of the Crown appears to be operating satisfactorily. However, to remove one area of possible uncertainty, it recommends that the Crown should receive and pay costs in accordance with the rules that apply in actions between private persons. Finally, in chapter 6, the Commission finds that, since the Crown is now under the same obligation to pay interest as a private person, no change in the law is necessary.

In chapter 7 of the report, an examination is made of the extent to which the Crown is subject to statutes. The Commission finds that the courts' unease with the existing general rule, which provides that the Crown is bound by statutes only where there is an express statement to that effect or where this arises by necessary implication, has generated an extraordinarily complicated body of case law. The Commission concludes that the current presumption should be reversed to provide that the Crown is subject to statute in the same way as any other person, and recommends that the *Interpretation Act* should be amended to provide that every Act and regulation made under it binds the Crown unless otherwise specifically provided.

The final chapter of the report reviews the law governing Crown agency and indicates that the status of Crown agent is determined either on the basis of the common law test of control or by express statutory designation. The Commission finds that the *Crown Agency Act*, which purports to confer Crown agency status on an ill-defined class of public bodies, does not alter this general rule. While acknowledging that the control test is subject to some uncertainty, the Commission concludes that the test operates in a generally satisfactory manner. The alternative of relying exclusively on an express statutory designation would not be satisfactory because it could narrow the range of persons who are Crown agents, and consequently limit the Crown's vicarious liability. The Commission also rejects the option of attempting to create a new definition of Crown agency, which would almost invariably suffer the interpretive uncertainty of the control test without the advantage of the courts' familiarity with that test. In the end, the Commission recommends that a Crown agent should continue to be identified by either the control test or by express statutory declaration. It further recommends that the *Crown Agency Act* and section 2(2) of the *Proceedings Against the Crown Act*, which exempts the Crown from liability in respect of a cause of action that is enforceable against a corporate Crown agent, should be abolished.

Damages for Environmental Harm (1990)

The Ontario Law Reform Commission's *Report on Damages for Environmental Harm* recommends the creation of a new statutory remedy for the protection of the environment—an award of civil damages payable to compensate the public for harm done to the environment, entirely independent of any damages that may be payable for private injury suffered by individuals or corporations.

This project evolved out of the Commission's 1989 *Report on the Law of Standing*. In the standing project, Professor W. A. Bogart, of the Faculty of Law, University of Windsor, who directed the project, and W. L. Vanveen, of the Ontario Bar, had prepared background papers that addressed several of the issues discussed in the environmental harm report. The report itself was written by Larry Fox and Ronda Bessner of the Commission's legal staff.

Under the Commission's proposals, the new civil damages remedy would be available not only to the Crown, but also to individuals and groups who would have the right to bring proceedings under the more liberal standing rule proposed by the Commission in its *Report on the Law of Standing*. Even an individual without a special personal, proprietary, or pecuniary interest in the proceeding may seek this remedy for the benefit of the public in the larger interest of protecting the environment. Such an individual would enjoy

the benefit of the favourable costs rules that we recommended in the Standing Report.

The Commission's endorsement of the new damages remedy follows from two basic premises: first, there may exist a public or general harm in the environmental context that is independent of any injury suffered by individuals personally; and second, individuals may have a legitimate stake in taking action responsive to this harm, even though they are not directly affected.

The introduction of a civil damages remedy would give courts needed flexibility in choosing the appropriate remedy when proceedings are brought in relation to pollution and other environmental injury. The Commission's view is that courts should be able to choose between injunctions and damages where harm to the environment is caused. It recommends that, in deciding whether to order an injunction or damages in connection with environmental harm, the court should be required to balance all the relevant factors, including the public interest in the protection of the environment, the impact on the defendant, and the social and economic consequences of each remedy.

Under the Commission's proposals, a court may order damages for environmental harm from a past injury. In addition, damages in connection with a harm continuing into the future may be ordered instead of an injunction, or where a court postpones the operation of an injunction for a certain period of time or orders a partial injunction.

In the report, much attention is given to the difficult problem of deciding how damages for environmental harm should be assessed by courts. The Commission reviews a number of methodologies, and considers the advantages and disadvantages of each. The relevant literature suggests a consensus among economists that, although certain methodologies ought to be employed in the vast majority of cases, no single method can be endorsed as suitable in all circumstances.

Natural resources have both use value and intrinsic or non-use value. Use value is based on the use to which natural resources may be put for practical human ends. By contrast, intrinsic value places a value on the preservation or continuing existence of natural resources. The Commission takes the view that courts ought to recognize both use value and intrinsic value in assessing damages for environmental harm, in the belief that it is the sum of these two values that more completely represents the true extent of the environmental loss.

Accordingly, the Commission recommends that, in assessing damages for environmental harm, there should be a rebuttable presumption in favour of the assessment methodologies that take account of both use and intrinsic values. Where this presumption is rebutted, a court may utilize the other methods discussed by the Commission, which focus primarily on use value.

The final questions considered in the report are to whom, and for what purposes, the damages are to be awarded, given that they are not sought for the plaintiff's own personal injury, but for the harm caused to the environment generally. The Commission recommends that an award of damages for environmental harm should be given to a special government body, with an explicit mandate to administer the award, rather than to the plaintiff.

What the government body must do with the award depends on the method of damages assessment used by the court. It may be required to use the funds to restore or replace the affected site, or to rehabilitate the environment generally, in any manner the government body deems appropriate.

Basis of Liability for Provincial Offences (1990)

The Ontario Law Reform Commission's *Report on the Basis of Liability for Provincial Offences* was based on a report prepared by Professor Don Stuart, of the Faculty of Law, Queen's University. The final report was prepared by Ronda Bessner of the Commission's legal staff.

In its report, the Commission recommends fundamental reform of the law relating to the categorization of provincial offences and other related matters. The report comes to the conclusion that the law is deficient in three main respects. First, there is no clear guidance concerning the basis of liability for provincial offences. Ontario legislation does not deal comprehensively with the basic issue concerning the degree of fault, if any, which must be established in order to obtain a conviction for different kinds of offences. Second, absolute liability offences continue to exist under provincial law. Under such offences, a person may be convicted where she has merely committed the physical act, or *actus reus*, of the offence, but has not been at fault. Finally, the Commission believes that the burden of proof in respect of provincial offences ought to be examined both as a matter of principle and in light of the *Canadian Charter of Rights and Freedoms*.

The Commission recommends the abolition of absolute liability offences under provincial law. The Commission is of the view that it is wrong in principle to convict a person merely for committing the prohibited physical

act, where the defendant has not engaged in morally blameworthy conduct. The Commission takes the position that legal responsibility for any provincial offence, however minor, should be based on some notion of fault.

The Commission also proposes the enactment of a new statutory regime to deal comprehensively with the basis of liability for provincial offences. This new legislation would strike a more appropriate balance between fairness to the individual and the essential law enforcement requirements of the community at large. Strict liability, or negligence, would constitute the minimum requirement of fault for all provincial offences, unless the Legislature expressly uses language connoting *mens rea*. In a strict liability offence, the standard is objective and is based on the conduct of the reasonable person in similar circumstances. *Mens rea*, on the other hand, is subjective and refers to fault based on an aware state of mind, such as intention, knowledge, recklessness or wilful blindness respecting the circumstances and/or consequences of the offence.

Although under the Commission's proposals strict liability would constitute the minimum standard, the Commission recommends that before an accused can be imprisoned for committing a provincial offence, either an aware state of mind or a marked and substantial departure from the conduct of a reasonable person in similar circumstances must be alleged and proved by the prosecution.

With respect to the burden of proof, the report recommends that, for *mens rea* and strict liability offences, the prosecution should continue to be required to establish beyond reasonable doubt that the defendant committed the physical act of the offence. In addition, for *mens rea* offences, the prosecution must prove beyond a reasonable doubt that the defendant committed the physical act with an aware state of mind. For strict liability offences, there would be a presumption that the defendant's conduct was not that of a reasonable person in similar circumstances. However, the defendant could not be convicted where some evidence is led to show that he took reasonable care to avoid the commission of the offence. Where such evidence of conduct capable of amounting to reasonable care has been adduced, thereby rebutting the presumption, in order to secure a conviction the prosecution would be required to establish the defendant's negligence beyond a reasonable doubt.

The Commission also makes proposals on a number of other related matters. The report deals with the appropriate sanction where a fine imposed under provincial legislation has not been paid. It recommends that section 70 of the *Provincial Offences Act* should be amended to ensure that only clearly wilful defaulters are liable to imprisonment for failure to pay a fine. Moreover, it is proposed that, unless it is unreasonable to do so, the

fine option program and the civil enforcement procedure under the Act ought to be resorted to before a warrant of committal can be issued.

Finally, the Commission recommends that every rule or principle of the common law and every provision of the *Criminal Code*, as amended from time to time, that is not limited to a specific offence, that renders any circumstance a justification or excuse for an act or omission, or a defence to an offence, should be available to a person charged with a provincial offence, except insofar as it is altered by or is inconsistent with any other Act.

The recommendations proposed in the report apply to offences appearing in provincial statutes and regulations, as well as to those imposed under municipal by-laws.

Administration of Estates of Deceased Persons (1991)

The Commission's *Report on Administration of Estates of Deceased Persons* was initially directed by Professor George W. Alexandrowicz, of the Faculty of Law, Queen's University. In 1985, direction of this project was assumed at the Commission by Larry M. Fox, Senior Counsel, who was primarily responsible for its completion. The report was written by Larry M. Fox, with the assistance of Jody Morrison, a member of the Commission's legal staff, and Professor Timothy Youdan, of Osgoode Hall Law School, York University.

The report deals with an area of the law that ultimately affects all of us.

Often close family members or friends of the deceased are named in the will or appointed by the court to administer the estate. This means that many of the people who may be called upon to carry out this task have not had the training to prepare them for it. Yet, in becoming responsible for the administration of an estate, they are nonetheless expected to do it in accordance with the law.

Administering an estate obviously occurs at an acutely sensitive time in the life of the family and friends of the deceased person. Issues as varied as the disposal of the deceased's body, the gathering of her assets, the payment of her debts, and the management of the remaining property until it is distributed properly will have to be addressed.

For these reasons, it is very important that the law governing the administration of the estates of deceased persons be rational, clear and accessible.

But it is not. The law is often difficult, uncertain, and obscure. It needs rationalization and modernization. The Commission's report therefore makes many recommendations for change.

While there are numerous recommendations, two fundamental policy directions are taken by the Commission. First, the Commission recommends that the position of persons who administer an estate—currently known as “personal representatives”—should generally be made similar to that of ordinary trustees. Personal representatives should have the same administrative powers as trustees, and should be subject to the same rules governing liability to others, compensation for their efforts, and termination of their responsibility. To signal clearly that personal representatives are generally to be treated by the law in the same manner as trustees, the Commission recommends that a new term be used. Personal representatives are to be called “estate trustees”, whether they are appointed by a will or by the court. Estate trustees may apply to the court for a document, to be called “an estate trustee certificate”, which will authorize them to act on behalf of the estate.

The second major direction in the report is that the Commission opposes the way that the present law treats real property and personal property. For historical reasons, very different rules govern the sale of real property and personal property and the order in which real property and personal property are sold to meet the liabilities of a solvent estate. There is no principled justification for maintaining these differences. In this report, the Commission recommends that there should no longer be any distinction in the way that personalty and realty are treated by the law.

Following an introductory chapter, the Commission examines the office of personal representative in some detail. It considers the principles governing appointment to the office, the powers and duties of personal representatives, their responsibility and liability to others, compensation and reimbursement, and suspension and termination of the office. The Commission recommends that many of the recommendations made in its 1984 *Report on the Law of Trusts* should apply to estate trustees. The Commission also makes recommendations concerning the duty to dispose of the body of the deceased, collect the estate, and pay its debts.

In chapter 3, the Commission considers how beneficiaries are identified—in particular, the rules governing proof of survivorship, proof of death in the case of missing beneficiaries, and unascertained beneficiaries. It makes a series of recommendations that are intended to ensure that the estate is distributed to the persons who are entitled to it.

In chapter 4, the Commission examines a number of substantive and procedural issues dealing with creditors and other claimants of the estate. In the case of insolvent estates, the Commission makes recommendations to rationalize the existing provincial and federal legislation. In the case of solvent estates, the Commission makes proposals to simplify and modernize the unnecessarily complex rules now governing the order in which estate assets are applied to meet the liabilities of the estate. The Commission also clarifies the law governing advertising for creditors, and the procedures available for the processing of claims against the estate. Finally, recommendations deal with certain miscellaneous issues: contingent liabilities; evidence in actions involving estates; the bonding of estate trustees; and exemptions under the *Execution Act* in favour of the family of a deceased debtor.

Chapter 5 deals with the vesting in estate trustees of both personal and real property and their power of sale in relation to that property. The Commission makes two recommendations that would fundamentally change the way that the law treats real property after death. First, it recommends the abolition of the present system under which real property may vest automatically in the persons beneficially entitled; real property will vest in the estate trustees and, except in the case of an order from the court, the only way that title to it may be transferred is by means of a conveyance from the estate trustee named in the estate trustee certificate. Second, the Commission recommends that, subject to the testator providing otherwise in her will, estate trustees should have a general power to sell both real and personal property of the estate. This power may be exercised without notice to any person, including the Official Guardian or the Public Trustee. The Commission also makes recommendations dealing with the distribution of personal and real property to the beneficiaries.

Chapter 6 addresses several discrete issues relating to the role of the Ontario Court (General Division) in estates administration. The Commission recommends a new "filing of accounts" procedure. Under the Commission's recommendations, there will be a formal passing of accounts, with attendances before a judge, only after the accounts are filed and where there is a dispute in connection with the accounts or the conduct of the estate trustees.

B. PROJECTS IN PROCESS

The Judicial Role and Judicial Appointments (1991)

The Ontario Law Reform Commission has published a collection of papers on the judicial role and judicial appointments, entitled *Appointing Judges: Philosophy, Politics and Practice*.

When the Meech Lake Accord gave the provinces the right to submit lists of candidates from which an appointment to the Supreme Court of Canada would be made, the Ontario Law Reform Commission embarked on a project on judicial appointments under the direction of Dean John Whyte, of Queen's University's Faculty of Law. The purpose of the project was to define a process and set of criteria to assist the Government of Ontario in choosing the best candidates.

The Accord was never ratified and the project accordingly lost its immediate rationale. But the question of how to select candidates not only to the Supreme Court, but also to all levels of the judiciary, remains an issue of increasing public interest. The *Canadian Charter of Rights and Freedoms* was probably the greatest stimulus to public attention on the judiciary and its membership. Although judges had always, through their interpretive role, played a role in the development of public policy, the constitutional entrenchment of the Charter transformed the role from a penultimate to an authoritative one. And this in turn focused public scrutiny on judges, the people now empowered to make final judgments about the state's capacity to legislate.

As this collection of papers demonstrates, these developments have heightened public interest not only in the judicial role, but in the qualifications of the people who execute the office. The very meanings of judicial neutrality, competence, and even omniscience have undergone critical reassessment, as have the processes that result in judicial appointment. Respect for judicial independence has been enhanced, as it should be, but so has the demand that the process of selection itself enjoy independence from the vagaries of politics. A more representative judiciary, more sensitive to the pluralistic and diverse values enshrined in the Charter and manifest in our changing society, is intensely urged.

Courts and judges have become the definers and guardians of the relationships between citizen and state set out in the Charter and they have become integral elements within the policy process. In a society of diverse interests and competing values, impartiality is increasingly understood not as a reflection of the status quo, but as a capacity to be genuinely open to the pluralistic views and people Canada represents. No longer are the traditional judicial attributes of knowledge, common sense, civility, and experience sufficient. Judicial decision-making is not the mechanical application of law and precedent to sets of facts. The legitimacy of the judges, and their effectiveness in playing the complex roles we have assigned them, depend on the openness and fairness of their selection, and on their sensitivity to the society which they serve and from which they come.

This volume is designed to explore just these issues. It represents an innovation in publications of the Ontario Law Reform Commission. It does not contain a set of recommendations. Instead, it consists of research and reflection on various aspects of judicial selection, embracing the varied points of view of a number of noted scholars responding to questions posed by the Commission. The broad issues explored in this volume – from philosophical questions about the role of courts in our society, to questions about representation and accountability, and to the specific procedures which might institutionalize and guarantee the values to be achieved in judicial selection – do not easily make for precise recommendations. Rather, with this volume, the Commission is, in accordance with its mandate, hoping to stimulate discussion on a legal issue of fundamental concern to the public.

Neither the Commission nor the authors make conclusive proposals for a particular process of judicial selection; but all endorse wholeheartedly an independent, representative judiciary, however selected, which is fully responsive to the dynamism of the law and the needs of the public it serves.

Exemplary Damages (1991)

In its *Report on Exemplary Damages*, the Ontario Law Reform Commission seeks to accomplish two main objectives. First, it seeks to respond to the arguments made in recent years suggesting that exemplary or punitive damages have contributed to a crisis in the operation of the tort law system, and to the so-called “insurance crisis”. Second, it seeks to rationalize the theoretical basis of exemplary damages, to assist in ensuring that they are awarded in accordance with clearly articulated principles.

The Project Director was Professor Bruce Feldthusen, of the Faculty of Law, University of Western Ontario. The final report was completed by Jody Morrison of the Commission’s legal staff.

Exemplary damages are awarded primarily to deter and punish the defendant for reprehensible conduct. Over the past several years, a great deal of concern has been expressed that exemplary damages have contributed to a perceived crisis in the operation of both the tort system, and the insurance industry. The specific concerns expressed include the following: (1) that exemplary damages are being claimed, and awarded, much more frequently than they were in the past; (2) that they are being claimed, and awarded, in cases involving increasingly diverse causes of action; (3) that they are being awarded in larger amounts than they once were; (4) that they are being awarded in cases in which they are not justified, or in excessive amounts; and (5) that spurious claims for exemplary damages may have an

undesirable effect on the settlement process, by coercing defendants to settle claims, or settle claims for higher amounts, than they would otherwise.

In order to investigate these concerns, and to develop a statistical foundation for this report, an empirical study was undertaken on behalf of the Commission. On the basis of this and other research conducted in connection with the report, the Commission concludes that there is no evidence of a “crisis” caused by the existing law of exemplary damages. The Commission also concludes that, given the existing legal principles in Ontario, it is unlikely that such a crisis would occur here.

The Commission does, however, make a number of recommendations for reform of the law of exemplary damages, designed to provide a clear, consistent and rational basis for such damages. In order to accomplish this objective, the Commission adopts a functional approach, isolating the three functions, or rationales, typically advanced to justify the award of exemplary damages: (1) compensation; (2) punishment; and (3) deterrence.

The Commission attempts to clarify the present law by making the goals sought to be achieved by an award of exemplary damages more explicit, and by identifying specifically the policy goals to which exemplary damages ought to be required to respond.

Chapter 2 summarizes the present law of exemplary damages in Canada, England, and the United States. It also contains a discussion of some of the significant differences between the law in Canada and the United States. Chapter 3 provides an outline of the arguments ordinarily advanced for and against the award of exemplary damages. The empirical information available about exemplary damages in Ontario and the United States is summarized in chapter 4.

One obvious approach suggested by the functional analysis adopted by the Commission is to exclude entirely the compensatory function from exemplary damages. The courts have already attempted to isolate the compensatory function by distinguishing aggravated damages from exemplary damages. Traditionally, aggravated damages compensate the plaintiff for injuries to pride and dignity resulting from the defendant’s exceptional conduct, while exemplary or punitive damages are intended to punish and deter the defendant. Therefore, the analysis in chapter 5 begins not with exemplary damages, but with aggravated damages. The Commission recommends that injuries to pride and dignity should be compensated according to ordinary compensatory principles. Specifically, the Commission recommends that the court should be empowered to award compensatory damages for injuries to pride and dignity as part of the ordinary global award of damages for non-pecuniary loss, and that such damages should be available without proof of

exceptional conduct. Our recommendations are designed to distinguish more sharply the compensatory function from deterrence and punishment, and so to clarify the subsequent analysis of exemplary damages.

Chapter 6 deals with the general case for exemplary damages as a supplement to the criminal law. Historically, the primary function of exemplary damages has been punishment, and the Commission recommends that it remain so. The Commission endorses the concept of civil punishment in exceptional cases as a supplement to the criminal law, and supports the symbolic function of punitive damages. It recommends that exemplary damages for the purpose of punishment should continue to be available in Ontario, and should be referred to as “punitive damages”, a term deliberately adopted to convey more accurately the purpose of the award.

The Commission further recommends that punitive damages should be awarded only where the defendant has advertently committed a wrongful act deserving of punishment, and where the defendant’s conduct was exceptional. It also recommends that the size of an award of punitive damages should be proportionate to the gravity of the act deserving of punishment. Finally, the Commission makes proposals respecting a variety of issues, including the quantification of punitive damages, the burden of proof, vicarious liability, concurrent wrongdoers, and the survival of claims.

In chapter 7 the Commission deals with an aspect of “tort for profit”, and recommends that where a plaintiff chooses the remedy of restitution, rather than suing in tort, he or she should also be entitled to claim punitive damages.

In chapter 8, special issues that pertain to negligence, nuisance, and equitable wrongs are discussed. The Commission recommends that punitive damages should be available, in accordance with the earlier proposals, in cases of both negligence and nuisance. In chapter 9 the Commission considers the unique case for imposing punitive damages on statutory public authorities, and recommends that public authorities should remain independently liable for punitive damages where they knowingly exceed their legal authority and injure another tortiously. Finally, in chapter 10, the Commission discusses extra damages in contract, and concludes that it would be premature to make recommendations for reform in this context.

Adjudication of Workplace Disputes

This project is being directed by Professor Bernard Adell, of the Faculty of Law, Queen’s University. The purpose is to see whether, in structure and

process, the adjudication of workplace disputes is taking place as effectively and expeditiously as possible.

In its project, the Commission will examine the following: Labour Relations Board; grievance arbitration; *Employment Standards Act* referees; appeals conducted by the Director of Appeals under the *Occupational Health and Safety Act*; *Ontario Human Rights Code* boards of inquiry; the Pay Equity Commission; the Ontario Public Service Labour Relations Tribunal; and the Grievance Settlement Board.

In addition, the Commission's study will examine whether aspects of administrative law are in need of reform as they relate to workplace disputes adjudication.

The Law of Testing: HIV/AIDS; Drug and Alcohol; Genetic and Psychological

The Ontario Law Reform Commission has embarked on four studies of the law of testing. More specifically, the Commission is examining the areas of HIV/AIDS, drug and alcohol, genetic, and psychological testing in a number of different contexts, like the workplace, schools, and other institutional settings. The projects will consider when and how to balance an individual's right to privacy and the public's right to information.

Public Inquiries and Coroners' Inquests

The Supreme Court of Canada's recent decision in *Starr v. Houlden* has highlighted many longstanding concerns about the role that public inquiries play in our justice system, whether as policy-making instruments or as fact-finding, investigatory devices, or indeed both. As a result, the Commission has initiated a project on the role of provincial inquiries appointed under the *Public Inquiries Act*. In addition, the project will consider the role of inquests held under the *Coroners Act*. In respect of both public inquiries and coroners' inquests, the project will examine the tension between pursuit of the public interest and, under certain circumstances, the protection of persons suspected of wrongdoing. The Project Director is Professor Kent Roach, of the Faculty of Law, University of Toronto.

Child Witnesses

The Ontario Law Reform Commission has currently undertaken the study of child witnesses in Ontario's civil system. The project is being directed by Ronda Bessner, Counsel at the Commission.

The Commission will first examine current psychological studies on the reliability of children's testimony. Some of the issues which the Commission is examining, in light of these studies, are what the competency requirements ought to be for child witnesses, whether the corroboration requirement for the unsworn testimony of children ought to be abolished, whether a statutory hearsay exception ought to be created respecting the hearsay statements of children, and whether statutory provisions should exist which permit children to offer testimony by different means.

Charities

Following a reference from the Attorney General, the Commission commenced a study of the law of charities in Ontario. The Project Director is Professor David Stevens, of the Faculty of Law, McGill University.

In this project, the Commission is examining the status, legal form, sources and uses of revenue, and supervision of charities. Among the specific issues canvassed are the following: (1) the type of activity that should benefit from the advantages accorded to charities; (2) whether organizations aimed at accomplishing political purposes should be considered charitable; (3) whether it is appropriate that charities be created by means of different legal forms (trusts, corporations, and unincorporated associations); (4) whether the investment powers of charities should be subject to restriction; (5) whether charities should be entitled to own for-profit organizations or to carry on business directly; (6) whether charitable fundraising activities should be controlled; and (7) who should be responsible for regulating charities, and by what means.

APPENDIX A

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report
Report No. 1 [The Rule Against Perpetuities]	1965
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966
Report No. 2 [The Wages Act: Assignment of Wages]	1965
Report No. 3 on Personal Property Security Legislation	1965
Report No. 3A on Personal Property Security Legislation	1966
Report on The Evidence Act: Admissibility of Business Records	1966
Report on The Mechanics' Lien Act	1966
Supplementary Report on The Mechanics' Lien Act	1967
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966
Report on The Execution Act: Exemption of Goods from Seizure	1966
Report on the Law of Condominium	1967
Report on the Basis for Compensation on Expropriation	1967
Report on the Limitation Period for Actions under The Sandwich, Winsor and Amherstburg Railway Act, 1930	1968
Annual Report 1967	1968
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968
Report on The Protection of Privacy in Ontario	1968
Report on Section 183 of The Insurance Act	1968
Report on Trade Sale of New Houses	1968
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968

Title	Date of Report
Report on the Status of Adopted Children	1969
Second Annual Report 1968	1969
Report on the Age of Majority and Related Matters	1969
Report on the Status of Adopted Children	1969
Report on Family Law, Part I: Torts	1969
Report on Section 20 the The Mortgages Act	1970
Report on Family Law, Part II: Marriage	1970
Third Annual Report 1969	1970
Report on Actions Against Representatives of Deceased Persons	1970
Report on the Coroner System in Ontario	1971
Report on Sunday Observance Legislation	1971
Report on Land Registration	1971
Fourth Annual Report 1970	1971
Report on The Change of Name Act	1971
Report on The Mortgages Act, Section 16	1971
Report on Development Control	1971
Report on Powers of Attorney	1972
Report on Occupiers' Liability	1972
Report on Consumer Warranties and Guarantees in the Sale of Goods	1972
Report on Review of Part IV of The Landlord and Tenant Act	1972
Fifth Annual Report 1971	1972
Report on the Non-Possessory Repairman's Lien	1972
Report on the Administration of Ontario Courts, Part I	1973
Sixth Annual Report 1972	1973
Report on the Administration of Ontario Courts, Part II	1973
Report on Family Law, Part III: Children	1973
Report on The Solicitors Act	1973
Report on Motor Vehicle Accident Compensation	1973
Report on the Administration of Ontario Courts, Part III	1973
Report on Family Law, Part IV: Family Property Law	1974

Title	Date of Report
Report on Family Law, Part V: Family Courts	1974
Seventh Annual Report 1973	1974
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974
Eighth Annual Report 1974	1975
Report on Family Law, Part VI: Support Obligations	1975
Report on Mortmain, Charitable Uses and Religious Institutions	1976
Report on Landlord and Tenant Law	1976
Report on the Law of Evidence	1976
Ninth Annual Report 1975	1976
Report on Changes of Name	1976
Report on the Impact of Divorce on Existing Wills	1977
Tenth Annual Report 1976	1977
Eleventh Annual Report 1977	1978
Report on Sale of Goods	1979
Twelfth Annual Report 1978	1979
Report on Products Liability	1979
Thirteenth Annual Report 1979	1980
Report on the Enforcement of Judgment Debts and Related Matters, Part I	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981
Fourteenth Annual Report 1980-81	1981
Report on Witnesses Before Legislative Committees	1981
Report on Class Actions	1982
Fifteenth Annual Report 1981-82	1982
Report on the Enforcement of Judgment Debts and Related Matters, Part IV	1983
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983
Report on Powers of Entry	1983
Sixteenth Annual Report 1982-83	1983
Report on the Law of Trusts	1983
Seventeenth Annual Report 1983-84	1984

Title	Date of Report
Report on Human Artificial Reproduction and Related Matters	1985
Twentieth Anniversary Report 1984-85	1985
Twenty-First Annual Report 1985-86	1986
Report on Political Activity, Public Comment and Disclosure by Crown Employees	1986
Report on Amendment of the Law of Contract	1987
Report on the Law of Mortgages	1987
Twenty-Second Annual Report	1987
Report on Compensation for Personal Injuries and Death	1987
Report on Contribution Among Wrongdoers and Contributory Negligence	1988
Report on Timesharing	1988
Twenty-Third Annual Report 1987-88	1988
Study Paper on Wrongful Interference with Goods	1989
Report on the Law of Standing	1989
Report on Covenants Affecting Freehold Land	1989
Report on Liability of the Crown	1989
Report on Damages for Environmental Harm	1990
Report on the Basis of Liability for Provincial Offences	1990
Report on Administration of Estates of Deceased Persons	1991
Report on Exemplary Damages	1991
1991 Ontario Law Reform Commission Report	1991

Copies of the Commission's Reports that are still in print may be ordered from Publications Services, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada M7A 1N8. Telephone (416) 326-5300. Toll free long distance 1-800-668-9938.

APPENDIX B

IMPLEMENTATION OF THE REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report No. 1 [The Rule Against Perpetuities]	1965	<i>The Perpetuities Act, 1966,</i> S.O. 1966, c. 113
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966	<i>do.</i>
Report No. 2 [The Wages Act: Assignment of Wages]	1965	<i>The Wages Amendment Act,</i> 1968, S.O. 1968, c. 142
Report No. 3 on Personal Property Security Legislation	1965	<i>The Personal Property Security Act, 1967, S.O.</i> 1967, c. 72
Report No. 3A on Personal Property Security Legislation	1966	<i>do.</i>
Report on The Evidence Act: Admissibility of Business Records	1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51,</i> s. 1
Report on The Mechanics' Lien Act	1966	<i>The Mechanics' Lien Act,</i> 1968-69, S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	1967	<i>do.</i>
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966	See <i>The Mechanics' Lien Amendment Act, 1975,</i> S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act,</i> 1975, S.O. 1975, c. 44 <i>The Public Works Creditors Payment Repeal Act, 1975, S.O.</i> 1975, c. 45
Report on The Execution Act: Exemption of Goods from Seizure	1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>
Report on the Law of Condominium	1967	<i>The Condominium Act,</i> 1967, S.O. 1967, c. 13

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on the Basis for Compensation on Expropriation	1967	<i>The Expropriations Act, 1968-69</i> , S.O. 1968-69, c. 36
Report on the Limitation Period for Actions under The Sandwich, Winsor and Amherstburg Railway Act, 1930	1968	<i>The Sandwich Windsor and Amherstburg Railway Amendment Act, 1968</i> , S.O. 1968, c. 120
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968	<i>Divorce Act</i> , S.C. 1967-68, c. 24, s. 26
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40 See <i>The Registry Amendment Act, 1978</i> , S.O. 1978, c. 8, s. 1
Report on The Protection of Privacy in Ontario	1968	See <i>The Consumer Reporting Act, 1973</i> , S.O. 1973, c. 97
Report on Trade Sale of New Houses	1968	See <i>The Ontario New Home Warranties Plan Act, 1976</i> , S.O. 1976, c. 52
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968	<i>The Landlord and Tenant Amendment Act, 1968-69</i> , S.O. 1968-69, c. 58
Report on Limitation of Actions	1969	See <i>The Highway Traffic Amendment Act (No. 2), 1975</i> , S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act, 1975</i> , S.O. 1975, c. 38 <i>The Trustee Amendment Act, 1975</i> , S.O. 1975, c. 39
Report on the Age of Majority and Related Matters	1969	<i>The Age of Majority and Accountability Act, 1971</i> , S.O. 1971, c. 98
Report on the Status of Adopted Children	1969	<i>The Child Welfare Amendment Act, 1970</i> , S.O. 1970, c. 96, s. 23

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Family Law, Part I: Torts	1969	<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	1970	<i>The Mortgages Amendment Act, 1970</i> , S.O. 1970, c. 54, s. 1
Report on Family Law, Part II: Marriage	1970	<i>The Civil Rights Statute Law Amendment Act, 1971</i> , S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act, 1977</i> , S.O. 1977, c. 42
Report on Actions Against Representatives of Deceased Persons	1970	<i>The Trustee Amendment Act, 1971</i> , S.O. 1971, c. 32, s. 2
Report on the Coroner System in Ontario	1971	<i>The Coroners Act, 1972</i> , S.O. 1972, c. 98
Report on Sunday Observance Legislation	1971	<i>The Retail Business Holidays Act, 1975</i> , S.O. 1975 (2nd Session), c. 9 <i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 134
Report on Land Registration	1971	See <i>The Corporations Tax Amendment Act (No. 2), 1979</i> , S.O. 1979, c. 89 <i>Land Registration Reform Act, 1984</i> , S.O. 1984, c. 32
Report on The Change of Name Act	1971	<i>The Change of Name Amendment Act, 1972</i> , S.O. 1972, c. 44 <i>Change of Name Act, 1986</i> , S.O. 1986, c. 7
Report on Development Control	1971	<i>The Planning Amendment Act, 1973</i> , S.O. 1973, c. 168, s. 10
Report on Powers of Attorney	1972	<i>The Powers of Attorney Act, 1979</i> , S.O. 1979, c. 107 <i>Powers of Attorney Amendment Act, 1983</i> , S.O. 1983, c. 74

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>Mental Health Amendment Act, 1983, c. 75</i>
Report on Occupiers' Liability	1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
Report on Review of Part IV of The Landlord and Tenant Act	1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
Report on the Non-Possessory Repairman's Lien	1972	<i>Repair and Storage Liens Act, 1989, S.O. 1989, c. 17 (partial implementation)</i>
Report on the Administration of Ontario Courts, Part I	1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
		<i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i>
		<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, ss. 19 and 25</i>
Report on the Administration of Ontario Courts, Part II	1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 162</i>
		See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
Report on Family Law, Part III: Children	1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i>
		<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i>
		<i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i>
		See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i>
Report on The Solicitors Act	1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 214(6)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on the Administration of Ontario Courts, Part III	1973	<p><i>The Judicature Amendment Act, 1975</i>, S.O. 1975, c. 30 (partial implementation)</p> <p>See <i>The Administration of Courts Project Act, 1975</i>, S.O. 1975, c. 31</p> <p><i>The Small Claims Courts Amendment Act, 1977</i>, S.O. 1977, c. 52 (partial implementation)</p>
Report on Family Law, Part IV: Family Property Law	1974	<p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40 (partial implementation)</p> <p><i>The Family Law Reform Act, 1978</i>, S.O. 1978, c. 2 (partial implementation)</p> <p><i>Family Law Act, 1986</i>, S.O. 1986, c. 4 (partial implementation)</p> <p>See <i>The Land Titles Amendment Act, 1978</i>, S.O. 1978, c. 7</p>
Report on Family Law, Part V: Family Courts	1974	<p>See <i>The Unified Family Court Act, 1976</i>, S.O. 1976, c. 85</p> <p><i>The Children's Probation Act, 1978</i>, S.O. 1978, c. 41 (partial implementation)</p>
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974	<p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40, s. 42</p>
Report on Family Law, Part VI: Support Obligations	1975	<p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40 (partial implementation)</p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Mortmain, Charitable Uses and Religious Institutions	1976	<i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i>
		<i>The Religious Organizations' Lands Act, 1979, S.O. 1979, c. 45</i>
		<i>The Anglican Church of Canada Act, 1979, S.O. 1979, c. 46</i>
		<i>The Registry Amendment Act, 1979, S.O. 1979, c. 94, s. 17</i>
		<i>Charities Accounting Amendment Act, 1982, S.O. 1982, c. 11</i>
Report on Landlord and Tenant Law	1976	<i>Mortmain and Charitable Uses Repeal Act, 1982, S.O. 1982, c. 12, s. 1(1)</i>
		<i>The Residential Tenancies Act, 1979, S.O. 1979, c. 78 (partial implementation)</i>
Report on Changes of Name	1976	<i>The Change of Name Amendment Act, 1978, S.O. 1978, c. 28</i>
		<i>The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)</i>
		<i>Change of Name Act, 1986, S.O. 1986, c. 7 (partial implementation)</i>
		<i>Vital Statistics Amendment Act, 1986, S.O. 1986, c. 9 (partial implementation)</i>
		<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i>
Report on the Impact of Divorce on Existing Wills	1977	
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981	<i>Wages Amendment Act, 1983, S.O. 1983, c. 68 (partial implementation)</i>
		<i>Proceedings Against the Crown Amendment Act, 1983, S.O. 1983, c. 88</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981	<i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 177 (partial implementation) Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation) Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983	<i>Creditors' Relief Amendment Act, 1985</i> , S.O. 1985, c. 1 (partial implementation)
Report on Compensation for Personal Injuries and Death	1987	<i>Courts of Justice Amendment Act, 1989</i> , S.O. 1989, c. 67 (partial implementation)

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APPENDIX C

JUDICIAL AND ACADEMIC REFERENCES TO REPORTS OF THE ONTARIO LAW REFORM COMMISSION*

Report No. 1 [The Rule Against Perpetuities] (1965)

Re Tilbury West Public School Board and Hastie, [1966] 2 O.R. 20

Report No. 3 on Personal Property Security Legislation (1965)

Harvey Hubbell Canada Inc. v. Thornhurst Corp. (1989), 69 O.R. (2d) 53
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George Wimpey Canada Ltd. v. Peelton Hills Ltd. et al. (1982), 35 O.R.
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Report on The Law of Condominium (1967)

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* This is a non-exhaustive listing of articles and cases in which the Commission's reports have been reviewed and cited.

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APPENDIX D

ONTARIO LAW REFORM COMMISSION ADVISORY BOARD

Margaret Atwood
Joanne Campbell
General Manager
Metro Toronto Housing Co. Ltd.

Mr. Justice Marvin Catzman
Court of Appeal of Ontario

Marshall Cohen
C.E.O.
The Molson Companies Ltd.

Anne R. Dubin
Tory, Tory, DesLauriers & Binnington

Her Honour Judge Mary F. Dunbar
Ontario Court of Justice
(Provincial Division)

Professor Margrit Eichler
Sociology Department
The Ontario Institute for Studies in Education

Catherine Frazee
Chief Commissioner
Ontario Human Rights Commission

Robert Fulford
Professor Phillipe Garigue
International Studies,
Glendon College

Edward L. Greenspan
Greenspan, Rosenberg

Jack D. Ground
Osler, Hoskin & Harcourt

Madame Justice Donna J. Haley
Ontario Court of Justice
(General Division)

Wilson Head
Past President
Urban Alliance on Race Relations

Gordon Henderson
Gowling, Strathy & Henderson

Peter Herrndorf
Publisher
Toronto Life Magazine

Peter W. Hogg
Professor of Law,
Osgoode Hall Law School

Dr. Ron Ianni
President
University of Windsor

Roberta Jamieson
Ombudsman

John Jennings
Kingsmill, Ross, McBride

Stephen Lewis

Marie Marchand
Project Co-ordinator
Women into Apprenticeship

Associate Chief Justice R. Roy McMurtry
Ontario Court of Justice
(General Division)

Associate Chief Justice John Morden
Court of Appeal of Ontario

Mr. Justice Ed Saunders
Ontario Court of Justice
(General Division)

Graham Scott
McMillan, Binch

James M. Spence
Treasurer
Law Society of Upper Canada

Janet Stewart
Lerner & Associates

Professor Katherine Swinton
Faculty of Law
University of Toronto

Associate Chief Judge Robert J.K. Walmsley
Special Adviser to Chief Judge
Ontario Court of Justice
(Provincial Division)

APPENDIX E

GROUPS AND ORGANIZATIONS CONSULTED BY THE ONTARIO LAW REFORM COMMISSION

In its projects, the Ontario Law Reform Commission consults regularly with members of the Bench, the Bar, the academic community, provincial and federal government ministries and agencies, and various persons, organizations and governmental institutions in other jurisdictions. In addition to the foregoing, during 1989-91 the Commission consulted with a wide range of groups and organizations, including the following:

Addiction Research Foundation
Adjudication Services Limited
Adventist Development and Relief Agency
Advocacy Resource Centre for the Handicapped
Aftermath: Self Help for Families of Sexually Abused Children
AIDS Action Now!
The AIDS Committee of Ottawa
AIDS Committee of Toronto
Alliance for a Drug-Free Canada
Alliance for Justice (Washington D.C.)
ALS Society
Anishnawbe Health Toronto
Anselma House
Association of Canadian Financial Corporations
Association of Local Official Health Agencies
Barrie District Rape Crisis Line
Baycrest Centre for Geriatric Care
Bereaved Families of Ontario
Bethesda Programs
Canadian Association for Adult Education
Canadian Association of Health and Safety Physicians
Canadian Association on Charitable Gift Annuities

Canadian Bankers Association
Canadian Bible Society
Canadian Centre for Occupational Health and Safety
Canadian Centre for Philanthropy
Canadian Citizenship Federation
Canadian Civil Liberties Association
Canadian Conference of Catholic Bishops
Canadian Conference of the Arts
Canadian Council of Churches
Canadian Development Investment Corporation
Canadian Environmental Law Association
Canadian Federation of Labour
Canadian Forestry Association
Canadian Foundation for Children, Youth and the Law
Canadian 4-H Council
Canadian Institute of Chartered Accountants
Canadian Life and Health Insurance Association Inc.
Canadian Manufacturers' Association
Canadian Medical Association
Canadian Mental Health Association
Canadian Organization for Development through Education
Canadian Red Cross Society
Canadian Rights and Liberties Federation
Canadian Shaare Zedek Hospital Foundation
Canadian Wildlife Federation
Casey House Hospice
Catholic Children's Aid Society
Catholic Church Extension Society of Canada
Central Ontario Industrial Relations Institute
Chedoke-McMaster Hospitals

Children's Aid Foundation
Children's Aid Society of Metropolitan Toronto
Children's Hospital of Eastern Ontario
Children's Services Branch, Ontario Ministry of Community and Social Services
Chinese Legal Clinic
Christian Blind Mission International Canada
Christian Children's Fund of Canada
Christian Horizons
Christian Reformed World Relief Committee
Christian Stewardship Services
COFTM/Centre Francophone
College of Nurses of Ontario
Community Foundation of Ottawa-Carleton
Community Outreach in Education Foundation
Conrad Grebel College
Council of Ontario Universities
Council for Business and the Arts in Canada
Council of Elizabeth Fry Societies of Ontario
Counselling Foundation of Canada
Crown Employees' Grievance Settlement Board
Delcrest Centre
Department of Public Health, City of Toronto
Department of Public Health Services, Regional Municipality of Hamilton-Wentworth
Donner Canadian Foundation
Downtown Churchworkers' Association
Eaton Foundation
Elizabeth Fry Society of Toronto
Epilepsy Canada
Evangelical Fellowship of Canada
Family Service Association of Metropolitan Toronto

Federal Centre for AIDS
Foster Parents Plan of Canada
Freeport Hospital Health Care Village
Goodwill Industries of Toronto
Guelph Spring Festival
Haemophilia Services
Halton Children's Aid Society
Halton Regional Health Department
Harambee Foundation
Hassle Free Clinic
Heart and Stroke Foundation of Ontario
Hospital for Sick Children Foundation
Hotel Dieu, Kingston
Human Resources Professionals Association of Ontario
Huntington University
Information and Privacy Commissioner/Ontario
Institute for Research on Public Policy
Institute for the Prevention of Child Abuse
Institute of Donation and Public Affairs Research
Inter Pares
J. A. Coombs Ltd.
J. D. Griffin Adolescent Centre
J. P. Bickell Foundation
Jackman Foundation
Jewish Community Services
Junior League of Toronto
Kerry's Place
Kinark Child and Family Services
Laidlaw Foundation
Lakehead Social Planning Council

Le Théâtre du Nouvel-Ontario Inc.
London Family Court Clinic
Lung Association
Lutherwood Child and Family Foundation
Max Bell Foundation
McGill Centre for Medicine, Ethics and Law
Metro Toronto Civic Employees Union, Local 43
Metropolitan Toronto Community Foundation
Metropolitan Toronto Special Committee on Child Abuse
Metropolitan Toronto Community Foundation
Metropolitan Toronto Police
Motor Transport Industrial Relations Bureau of Ontario (Inc)
Mount Sinai Hospital Foundation
N'Swakamok Native Friendship Centre
Office of the Official Guardian, Ontario Ministry of the Attorney General
Office of the Public Trustee, Ontario Ministry of the Attorney General
Ontario Arts Council
Ontario Association of Children's Aid Societies
Ontario College of Pharmacists
Ontario College of Physicians and Surgeons
Ontario Council of Teaching Hospitals
Ontario Dental Association
Ontario Federation of Labour
Ontario Foundations Committee
Ontario Heritage Foundation
Ontario Hospital Association
Ontario Human Rights Commission
Ontario Labour Relations Board
Ontario March of Dimes
Ontario Medical Association

Ontario Monument Builders Association
Ontario Nurses Association
Ontario Pharmacists' Association
Ontario Public Service Labour Relations Tribunal
Ontario Teachers' Federation
Ontario Public School Teachers' Federation
Ottawa Valley Autistic Homes
Parkwood Hospital
Pay Equity Commission
Pay Equity Hearings Tribunal
Perth Foundation for the Enrichment of Education
Peterborough Community Forum on Child Abuse
Physicians' Services Incorporated Foundation
Pickering College
Provincial Building and Construction Trades Council of Ontario
Revenue Canada, Registration Directorate, Charities Division
Richard and Jean Ivey Fund
Roman Catholic Episcopal Corporation, Archdiocese of Toronto
Ryerson Polytechnical Institute
St. Joseph's Health Care Foundation
St. Michael's Hospital, Toronto
Salvation Army
Second Mile Club of Toronto
Senior Peoples Resources in North Toronto
Sir Stanford Fleming College
Social Planning Council of Kitchener-Waterloo
Social Planning Council of Metropolitan Toronto
Social Planning Council of Peel
Street Health
Street Outreach Services

Sunnybrook Foundation
Sunnybrook Hospital
Superior Memorials
Support and Custody Enforcement Branch, Ontario Ministry of the Attorney General
Surrey Place Centre
Suspected Child Abuse and Neglect Program, Hospital for Sick Children
Theatre Direct Canada
Toronto AIDS Drop-In Centre
Toronto Theatre Alliance
Toronto Workers' Health & Safety Legal Clinic
Trillium Foundation (Ontario)
TVOntario
Unicef Canada
United Way of Greater Toronto
University Hospital, London
Upper Canada College
Victim/Witness Program, Ontario Ministry of the Attorney General
Victoria Order of Nurses (Ontario)
Victoria Order of Nurses for Canada
Vision Institute
Voice for Hearing Impaired Children
Voluntary Action Directorate, Department of the Secretary of State of Canada
War Amputations of Canada
Wesway
Women's Legal Education and Action Fund (LEAF)
YMCA of Metropolitan Toronto
Young Naturalist Foundation
YWCA of Canada
YWCA of Kitchener-Waterloo

APPENDIX F

OFFICERS AND STAFF

ONTARIO LAW REFORM COMMISSION

Chair	Rosalie S. Abella, BA, LLB
Vice Chair	Richard E.B. Simeon, Ph.D
Commissioners	Earl A. Cherniak, QC, BA, LLB J. Robert S. Prichard, MBA, LLM (to July 31, 1990) John D. McCamus, MA, LLM (from August 1, 1990) Margaret A. Ross, BA (Hon), LLB
Counsel	Melvin A. Springman, MA, MSc, LLB, General Counsel and Director of Research Larry M. Fox, LLB, Senior Counsel Judith A. Bellis, BA, LLB J. Jody Morrison, BA (Hon), LLM Ronda F. Bessner, BA (Hon), BCL, LLB, LLM Christine B. Henderson, BA, LLB
Visiting Scholars	Chief Justice Edward D. Bayda Saskatchewan Court of Appeal (1990) Professor Peter Hogg Osgoode Hall Law School (1991)
Secretary and Administrative Officer	Anne McGarrigle, LLB
Administrative Assistant	Beverley G. Woodley
Secretary to Chair	Tina Afonso
Librarian	Christopher Hughes
Secretary to General Counsel	D. M. Halyburton
Secretary to Administrative Officer	Mary M. O'Hara
Secretaries to Counsel	Cora Calixterio Sharon Hattori

The past three years has seen significant changes in the membership and staff of the Ontario Law Reform Commission.

On March 20, 1989, James R. Breithaupt, the Chair of the Ontario Law Reform Commission, was appointed Chair of the Commercial Registration Appeals Tribunal. The Commission wishes to extend to Mr. Breithaupt its best wishes and warmest congratulations on his appointment to this office, in which he will undoubtedly continue his dedicated service to the people of Ontario.

Mr. Breithaupt had been Chair of the Ontario Law Reform Commission since November 1, 1984. During his tenure as Chair, the Commission published a number of Reports, dealing with such diverse matters as human artificial reproduction, political activity and public comment by Crown employees, contribution among wrongdoers, and compensation for personal injury and death.

In March 1989, H. Allan Leal retired as Vice Chair of the Commission. Dr. Leal became a founding member of the Ontario Law Reform Commission in 1964, serving as its Chairman from 1966 to 1977, and as its Vice Chairman from 1981 to 1989. Dr. Leal's prodigious knowledge of the law and commitment to law reform were reflected in Commission reports addressing a broad spectrum of social and legal issues. Important pieces of legislation, dealing with family law, landlord and tenant, condominiums, courts administration, to name but a few, were based on reports published under his wise stewardship. As Vice Chairman, Dr. Leal continued to play an indispensable role in the life of the Commission.

On July 31, 1990, Dean J. Robert S. Prichard, of the Faculty of Law, University of Toronto, resigned as a member of the Ontario Law Reform Commission to assume his new position as President of the University of Toronto. We wish to congratulate him on his appointment to this office, which he will no doubt discharge with the same vigour and brilliance that he brought to the Commission. Dean Prichard had served as a Commissioner since March, 1986.

In July, 1988, Ms. M. Patricia Richardson, Counsel to the Commission – the position is now known as General Counsel and Director of Research – left the Commission to become Vice Chair of the Automobile Insurance Board. Ms. Richardson joined the Commission as a Legal Research Officer in April, 1974, and became Counsel in December, 1976. Her dedication and the excellence of her contribution to the work of the Commission are evident in numerous reports published during this period.

On November 30, 1989, Mrs. Stephanie Hlynka retired as Secretary to the chair. She served the Commission with diligence and competence for 23 years. We wish her well in all that lies ahead.

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Publications

ANNUAL REPORT 1991-92

ONTARIO LAW REFORM COMMISSION



ANNUAL REPORT 1991-92

ONTARIO LAW REFORM COMMISSION



The Ontario Law Reform Commission was established by the Ontario Government in 1964 as an independent legal research institute. It was the first Law Reform Commission to be created in the Commonwealth. It recommends reform in statute law, common law, jurisprudence, judicial and quasi-judicial procedures, and in issues dealing with the administration of justice in Ontario.

Commissioners

Rosalie S. Abella, BA, LLB, *Chair*

Richard E.B. Simeon, PhD, *Vice Chair*

Earl A. Cherniak, QC, BA, LLB

John D. McCamus, MA, LLM

Margaret A. Ross, BA (Hon), LLB

Counsel

J.J. Morrison, BA (Hon), LLB, LLM

Ronda F. Bessner, BA (Hon), BCL, LLB, LLM

Christine B. Henderson, BA, LLB

Lisa Brownstone, BA, LLB, LLM

Donald F. Bur, LLB, LLM, BCL, PhD

Chief Administrator

Mary Lasica, BAA

The Commission's office is located on the Eleventh Floor at 720 Bay Street, Toronto, Ontario, Canada, M5G 2K1. Telephone (416) 326-4200. FAX (416) 326-4693.

This Report is also available in French.



**Ontario
Law Reform
Commission**



To The Honourable Howard Hampton
Attorney General for Ontario

Dear Attorney:

We have the honour to present the 1991-92 Annual Report of the Ontario Law Reform Commission, for the period ending March 31, 1992, in accordance with section 2(3) of the *Ontario Law Reform Commission Act*, R.S.O. 1990.

Rosalie S. Abella
Chair

Richard E. B. Simeon
Vice Chair

Earl A. Cherniak
Commissioner

John D. McCamus
Commissioner

Margaret A. Ross
Commissioner

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INTRODUCTION

This report outlines the activities of the Ontario Law Reform Commission for the year ending March 31, 1992. As it happens, it also presents a personal opportunity to thank the Commission for an extraordinary term as its Chair for the past three years. Being appointed to the Bench transforms my relationship with the O.L.R.C. from anxious producer to eager client; but it affects my loyalty to the Commission and its goals not one bit.

If anything, my sense that Law Reform Commissions are vital institutional contributors to legal policy has grown with time and exposure. They are natural partners with governments in the development of reform visions, but they also enjoy a perspective not usually available to day-to-day governors. They are neither constrained by the urgencies of the moment nor inhibited by the caution the search for early and wide approval inspires.

This is not to suggest that Law Reform Commissions have no duty to be relevant, practical, or careful. It suggests instead that our definition of what is relevant, practical, and careful has a different perimeter when measuring the boundaries of work produced by think tanks. Whether temporally, substantively or conceptually, these institutions can—and should—think about issues of law and policy for which governments have no time, appetite, courage or immediate need.

Issues too large, too small, too contentious or too embryonic for the government of the day, may nonetheless be issues in need of public policy analysis and potential reform. By their nature, such issues are best examined by skilled institutions which are committed to the public and to policy, while at the same time independent of the governments or agitations of the day.

Law Reform Commissions are such institutions, ready to have their work tested by time, not immediate legislative response, and with the time to generate the menu of ideas from which generations of legislators, lawyers, academics, judges, journalists, civil servants, analysts, and thinkers—all members of the community—choose their policy nourishment. Their value lies in the public and private debate their work intellectually subsidizes, not only in the number of statutes their formulations encourage. Their importance is in their capacity to broker and inspire and spotlight ideas of public value. And it is the quality of those ideas that should determine relevance, measured not against idiosyncratic or ideological or sectoral concerns, but against time and the public interest.

It is for all these reasons that the Ontario Law Reform Commission created a broadly based Advisory Board, developed monthly multi-disciplinary Roundtable Discussions on Law and Social Policy, expanded its research agenda to include more public law issues, and issued a wider variety of research publications. This represents considerable change in a relatively short period of time, but it by no means represents the conclusion of the evolution that started so brilliantly in 1964 when Ontario established the first Law Reform Commission in the Commonwealth.

It is a Commission that has radiated from the talents of dozens of committed staff lawyers and Commissioners over the years. But it is hard to imagine a more collegial, congenial and dedicated group of people than those I have had the privilege of working with over the past three years. A particularly grateful sentiment is owed to Richard Simeon, the Political Scientist and Vice-Chair who co-designed the Commission's programme and helped implement it with enthusiasm and generosity; and to our fellow Commissioners — Rob Prichard, Margaret Ross, Earl Cherniak and John McCamus — who created the machinery to carry out the vision and provided the fuel. It is a great group of people in service of a great Commission.

During the past year we have completed four major reports, a collection of papers, and a compilation of the Commission's recommendations.

The *Report on Exemplary Damages* was tabled in the Ontario Legislature on June 27, 1991. The *Report on Child Witnesses* was tabled on July 25, 1991. Also tabled were the *Report on Testing for AIDS* and the *Report on Public Inquiries*, on March 12, 1992, and March 30, 1992, respectively.

In addition to these reports, the Commission released a collection of papers on the judicial role and judicial appointments, entitled *Appointing Judges: Philosophy, Politics and Practice*, as well as a three volume reference work containing a summary of the recommendations made by the Commission since its inception.

Finally, the Commission initiated a series of Roundtable discussions to examine various issues in law and social policy reform, discussed in Appendix C.

THE PROGRAM

A. COMPLETED PROJECTS

Appointing Judges: Philosophy, Politics and Practice

When the Meech Lake Accord gave the provinces the right to submit lists of candidates from which an appointment to the Supreme Court of Canada would be made, the Ontario Law Reform Commission embarked on a project on judicial appointment under the direction of Dean John Whyte, of Queen's University's Faculty of Law. The purpose of the project was to define a process and set of criteria to assist the Government of Ontario in choosing the best candidates.

The Accord was never ratified and the project accordingly lost its immediate rationale. But the question of how to select candidates not only to the Supreme Court, but also to all levels of the judiciary, remains an issue of increasing public interest. The *Canadian Charter of Rights and Freedoms* was probably the greatest stimulus to public attention on the judiciary and its membership. Although judges had always, through their interpretive role, played a role in the development of public policy, the constitutional entrenchment of the Charter transformed the role from a penultimate to an authoritative one. And this in turn focused public scrutiny on judges, the people now empowered to make final judgments about the state's capacity to legislate.

As this collection of papers demonstrates, these developments have heightened public interest not only in the judicial role, but in the qualifications of the people who execute the office. The very meanings of judicial neutrality, competence, and even omniscience have undergone critical reassessment, as have the processes that result in judicial appointment. Respect for judicial independence has been enhanced, as it should be, but so has the demand that the process of selection itself enjoy independence from the vagaries of politics. A more representative judiciary, more sensitive to the pluralistic and diverse values enshrined in the Charter and manifest in our changing society, is intensely urged.

Courts and judges have become the definers and guardians of the relationships between citizen and state set out in the Charter and they have become integral elements within the policy process. In a society of diverse interests and competing values, impartiality is increasingly understood not as a reflection of the status quo, but as a capacity to be genuinely open to the pluralistic views and people Canada represents. No longer are the traditional judicial attributes of knowledge, common sense, civility, and experience

sufficient. Judicial decision-making is not the mechanical application of law and precedent to sets of facts. The legitimacy of the judges, and their effectiveness in playing the complex roles we have assigned them, depend on the openness and fairness of their selection, and on their sensitivity to the society which they serve and from which they come.

This volume is designed to explore just these issues. It represents an innovation in publications of the Ontario Law Reform Commission. It does not contain a set of recommendations. Instead, it consists of research and reflection on various aspects of judicial selection, embracing the varied points of view of a number of noted scholars responding to questions posed by the Commission. The broad issues explored in this volume – from philosophical questions about the role of courts in our society, to questions about representation and accountability, and to the specific procedures which might institutionalize and guarantee the values to be achieved in judicial selection – do not easily make for precise recommendations. Rather, with this volume, the Commission is, in accordance with its mandate, hoping to stimulate discussion on a legal issue of fundamental concern to the public.

Neither the Commission nor the authors make conclusive proposals for a particular process of judicial selection; but all endorse wholeheartedly an independent, representative judiciary, however selected, which is fully responsive to the dynamism of the law and the needs of the public it serves.

Exemplary Damages

In its *Report on Exemplary Damages*, the Ontario Law Reform Commission seeks to accomplish two main objectives. First, it seeks to respond to the arguments made in recent years suggesting that exemplary or punitive damages have contributed to a crisis in the operation of the tort law system, and to the so-called “insurance crisis”. Second, it seeks to rationalize the theoretical basis of exemplary damages, to assist in ensuring that they are awarded in accordance with clearly articulated principles.

Exemplary damages are awarded primarily to deter and punish the defendant for reprehensible conduct. Over the past several years, a great deal of concern has been expressed that exemplary damages have contributed to a perceived crisis in the operation of both the tort system, and the insurance industry. The specific concerns expressed include the following: (1) that exemplary damages are being claimed, and awarded, much more frequently than they were in the past; (2) that they are being claimed, and awarded, in cases involving increasingly diverse causes of action; (3) that they are being awarded in larger amounts than they once were; (4) that they are

being awarded in cases in which they are not justified, or in excessive amounts; and (5) that spurious claims for exemplary damages may have an undesirable effect on the settlement process, by coercing defendants to settle claims, or settle claims for higher amounts, than they would otherwise.

In order to investigate these concerns, and to develop a statistical foundation for this report, an empirical study was undertaken on behalf of the Commission. On the basis of this and other research conducted in connection with the report, the Commission concludes that there is no evidence of a “crisis” caused by the existing law of exemplary damages. The Commission also concludes that, given the existing legal principles in Ontario, it is unlikely that such a crisis would occur here.

The Commission does, however, make a number of recommendations for reform of the law of exemplary damages, designed to provide a clear, consistent and rational basis for such damages. In order to accomplish this objective, the Commission adopts a functional approach, isolating the three functions, or rationales, typically advanced to justify the award of exemplary damages: (1) compensation; (2) punishment; and (3) deterrence.

The Commission attempts to clarify the present law by making the goals sought to be achieved by an award of exemplary damages more explicit, and by identifying specifically the policy goals to which exemplary damages ought to be required to respond.

Chapter 2 summarizes the present law of exemplary damages in Canada, England, and the United States. It also contains a discussion of some of the significant differences between the law in Canada and the United States. Chapter 3 provides an outline of the arguments ordinarily advanced for and against the award of exemplary damages. The empirical information available about exemplary damages in Ontario and the United States is summarized in chapter 4.

One obvious approach suggested by the functional analysis adopted by the Commission is to exclude entirely the compensatory function from exemplary damages. The courts have already attempted to isolate the compensatory function by distinguishing aggravated damages from exemplary damages. Traditionally, aggravated damages compensate the plaintiff for injuries to pride and dignity resulting from the defendant’s exceptional conduct, while exemplary or punitive damages are intended to punish and deter the defendant. Therefore, the analysis in chapter 5 begins not with exemplary damages, but with aggravated damages. The Commission recommends that injuries to pride and dignity should be compensated according to ordinary compensatory principles. Specifically, the Commission recommends that the court should be empowered to award compensatory

damages for injuries to pride and dignity as part of the ordinary global award of damages for non-pecuniary loss, and that such damages should be available without proof of exceptional conduct. Our recommendations are designed to distinguish more sharply the compensatory function from deterrence and punishment, and so to clarify the subsequent analysis of exemplary damages.

Chapter 6 deals with the general case for exemplary damages as a supplement to the criminal law. Historically, the primary function of exemplary damages has been punishment, and the Commission recommends that it remain so. The Commission endorses the concept of civil punishment in exceptional cases as a supplement to the criminal law, and supports the symbolic function of punitive damages. It recommends that exemplary damages for the purpose of punishment should continue to be available in Ontario, and should be referred to as “punitive damages”, a term deliberately adopted to convey more accurately the purpose of the award.

The Commission further recommends that punitive damages should be awarded only where the defendant has advertently committed a wrongful act deserving of punishment, and where the defendant’s conduct was exceptional. It also recommends that the size of an award of punitive damages should be proportionate to the gravity of the act deserving of punishment. Finally, the Commission makes proposals respecting a variety of issues, including the quantification of punitive damages, the burden of proof, vicarious liability, concurrent wrongdoers, and the survival of claims.

In chapter 7 the Commission deals with an aspect of “tort for profit”, and recommends that where a plaintiff chooses the remedy of restitution, rather than suing in tort, he or she should also be entitled to claim punitive damages.

In chapter 8, special issues that pertain to negligence, nuisance, and equitable wrongs are discussed. The Commission recommends that punitive damages should be available, in accordance with the earlier proposals, in these cases. In chapter 9 the Commission considers the unique case for imposing punitive damages on statutory public authorities, and recommends that public authorities should remain independently liable for punitive damages where they knowingly exceed their legal authority and injure another tortiously. Finally, in chapter 10, the Commission discusses extra damages in contract, and concludes that it would be premature to make recommendations for reform in this context.

Child Witnesses

In the *Report on Child Witnesses*, the Ontario Law Reform Commission attempts to achieve three principal objectives: (1) to challenge the assumptions on which many of our legal rules are based regarding the unreliability of children's evidence; (2) to encourage the Legislature to repeal legal rules which impede child witnesses from telling the court what they witnessed; and (3) to introduce protective devices into the legal system to ensure that the court receives as complete, coherent and accurate an account as possible from the child witness. The report demonstrates that many of the common law and statutory rules applicable to child witnesses are based on erroneous notions about the unreliability of children's testimony. Psychological studies conducted in the last twenty years show that the traditional views about children's evidence lack empirical foundation. The current research clearly indicates that children do have adequate cognitive skills to understand or to describe what they have witnessed, children can differentiate fact from fantasy, and children have an ethical sense and are no more likely to fabricate evidence than are adults.

The Commission recommends that the oath be abolished and that it be replaced with a promise to tell the truth. The rules in the Ontario *Evidence Act* have made it extremely difficult for children to be qualified as witnesses with the result that judges may be deprived of hearing potentially valuable evidence. The Commission's view is that the oath requirement is essentially a test of religious understanding rather than a test of the child's ability to understand the importance of being truthful. The transformation of Ontario from a religious to a largely secular society further accentuates the inappropriateness of the oath.

The Commission proposes that the provision in the *Evidence Act* requiring corroboration of a child's unsworn evidence be repealed. In addition, the Commission recommends that there be no rule of any kind that requires a court to assume that the uncorroborated evidence of a child is unreliable. The Commission makes these recommendations for the following reasons. First, there is no scientific basis for assuming that a child is incapable of furnishing reliable evidence. Second, there is often no direct evidence, either physical or eyewitness, to corroborate the child's testimony. A further reason for the abolition of these legal rules is that it is unreasonable and unfair to have such restrictive evidentiary rules for children and not for adult witnesses.

Reform of the hearsay rule for the statements of children is another important recommendation in the report. In many cases, the hearsay evidence of the child is the best evidence of the subject matter being litigated

and constitutes the only substantive evidence of the subject of the proceedings. The Commission recommends that the hearsay statements of a child be admissible, if, in the opinion of the judge, the statements are sufficiently reliable. The court can then assess the weight to be accorded to the child's out-of-court statements. The Commission believes that this recommendation will introduce clarity into the law and will permit what may be extremely reliable evidence to be considered by the courts.

In the final section of the report, the Commission proposes that legislation should be introduced which accommodates children who give evidence in civil proceedings. The vulnerability of child witnesses should be acknowledged and the manner in which children give evidence modified accordingly. Legislation which authorizes videotaped testimony and which permits child witnesses to testify behind a screen or by closed-circuit television will help ensure that reliable evidence is presented and heard. Children should be protected in the court process in order to tell their story as easily, accurately and comprehensively as possible.

Testing for AIDS

In its *Report on Testing for AIDS*, the Ontario Law Reform Commission recommends that any HIV-related test be performed only with an individual's voluntary, specific, and informed consent. HIV-related tests are different from most standard blood tests because of the personal, social, and financial consequences of being identified as HIV-infected. In the absence of an effective treatment, and in the presence of a stigmatizing social understanding of AIDS and HIV infection, the most successful efforts to reduce the spread of infection should focus upon the public health strategy of encouraging individuals at risk to determine their serological status voluntarily, and to engage in risk-reducing behaviour. In the Commission's view, targeted public health education campaigns and programs, coupled with wide availability of voluntary HIV antibody testing, are the most effective means currently available to reduce HIV transmission. The Commission therefore opposes mandatory HIV-related testing programs, other than in relation to the use of blood or tissue donations or anonymous screening for research or epidemiological purposes.

The Commission believes that stringent confidentiality protection for all HIV-related information is essential not only to prevent the serious consequences that can arise from unwarranted disclosure, but also to encourage people at risk to come forward and to determine their HIV status voluntarily. Protection of information pertaining to HIV-related testing and treatment promotes society's interest in individual privacy and the public

health without impairing the community's right to be protected from the spread of disease. Accordingly, the Commission recommends that individuals should be able to test for HIV infection without being personally identified. Significant non-identifying medical and demographic information should continue to be reported to public health authorities.

The Commission views a well-functioning, voluntary, physician-centred partner notification scheme as an important part of sound HIV public health policy. The Commission proposes the implementation of a physician-centred program of partner notification, that would encourage patients to cooperate with their personal physicians in notifying partners. Under precisely defined guidelines, doctors should be able to notify identifiable, unsuspecting partners of HIV-infected patients who are at significant risk of infection. The Commission further proposes that both doctors and patients be given the option to seek the assistance of public health authorities in the notification process and that doctors who do notify partners should be protected against the potential for liability resulting from such responsibilities.

Finally, to ensure that HIV-related issues are dealt with in the most comprehensive manner possible, the Commission recommends the enactment of legislation, preferably an HIV-specific statute, to govern all substantive rules respecting HIV-related testing and the confidentiality of HIV-related information.

Public Inquiries

In its *Report on Public Inquiries*, the Ontario Law Reform Commission concludes that, while public inquiries should be retained, the law governing them should be reformed to protect individuals. Public inquiries have played an important role in the history of both the province and the country as a whole. Although their impact is difficult to judge, they have often dealt with the pressing concerns and controversies of the day, as well as many aspects of the longer term policy agenda. Public inquiries have become an important part of government, distinct from the Legislature, the executive, and the judiciary. However, the activities of two recent Ontario public inquiries have been shaped, and in one case terminated, by judicial proceedings raising questions about the utility and fairness of public inquiries.

The Commission observes that there are, in effect, two kinds of public inquiry; those dealing primarily with policy formulation, and those investigating wrong-doing. It is the latter kind of inquiry that impacts most seriously on a person's rights, and will therefore be most affected by the Commission's reform proposals.

In order to respond to concerns that have been expressed regarding public inquiries, the Commission makes a number of recommendations designed to minimize the prejudice and unfairness that results from the public inquiry process, without impairing the execution of their mandates. The Commission recommends, for example, that, subject to certain exceptions, everyone summoned to testify before a public inquiry should have a statutory right to refuse to testify on the grounds that such testimony might incriminate him or her. The Commission also recommends that where an inquiry believes that a person will be subject to serious allegations of misconduct in public proceedings of the inquiry, the inquiry should give the person notice of such allegations, and that a person receiving such a notice should have a right to respond.

The Commission also makes a number of recommendations that will recognize and protect the independence of public inquiries from the executive and the Legislature, facilitate public involvement, and enhance the effectiveness and efficiency of public inquiries, while respecting the need for fairness, independence and participation. Thus, the Commission recommends that if within thirty days of its delivery to the Lieutenant Governor in Council a commission's report has not been tabled in the Legislature or released to the public, the commission should have the right to release the report. The Commission further recommends that any individual or organization with a genuine interest in any matter relating to the subject matter of an inquiry should be entitled to make submissions.

The report consists of six chapters. In chapter 1 the Commission traces the development of the public inquiry as an important instrument of government in Canada and examines the policy role of public inquiries in comparison to alternative institutions.

In chapter 2 the Commission examines the present law of public inquiries in Ontario, including the statutory criteria for the appointment of inquiries, the drafting of an inquiry's terms of reference, the selection of commissioners, the independence of inquiries to conduct their own proceedings and release their own report, the procedure and evidentiary rules governing the conduct of inquiries (including the publicity and openness of hearings, standing, and notice), and the procedures for judicial review.

Chapter 3 deals with public inquiries and the Constitution. The first part of this chapter deals with the limits of Ontario's jurisdiction under the division of powers to appoint and conduct public inquiries. The second part of the chapter examines the effect of the legal rights in sections 7 and 13 of the Charter on the conduct of inquiries. Particular attention is paid to their effect on the powers in the Public Inquiries Act to summon and compel

testimony from individuals and the production of documents and other evidence.

In chapter 4 the case for reform is set out. This chapter includes a discussion of the criticisms that have been made of public inquiries. It also includes a discussion of the classification schemes that have been advanced, particularly the suggested distinction between advisory and investigative inquiries, as well as the various critiques that have been made of this distinction.

In chapter 5 certain law reform proposals and legislation of a number of other jurisdictions are surveyed.

Finally, in chapter 6, the major options for reform are outlined, as are the general principles that should guide reform.

Summary of Recommendations

This three volume work summarizes the Ontario Law Reform Commission's reports and recommendations since the Commission was created by the Ontario government in 1964. It is intended to make the work of the Commission more accessible to the public and to those interested in legal policy. This will be an ongoing service as reports are released.

B. PROJECTS IN PROCESS

Adjudication of Workplace Disputes

This project is being directed by Professor Bernard Adell, of the Faculty of Law, Queen's University. The purpose is to see whether, in structure and process, the adjudication of workplace disputes is taking place as effectively and expeditiously as possible.

In its project, the Commission will examine the following: Labour Relations Board; grievance arbitration; *Employment Standards Act* referees; appeals conducted by the Director of Appeals under the *Occupational Health and Safety Act*; *Ontario Human Rights Code* boards of inquiry; the Pay Equity Commission; the Ontario Public Service Labour Relations Tribunal; and the Grievance Settlement Board.

In addition, the Commission's study will examine whether aspects of administrative law are in need of reform as they relate to workplace disputes adjudication.

The Law of Testing: Drug and Alcohol; Genetic and Psychological Testing

The Ontario Law Reform Commission has embarked on four studies of the law of testing. The Commission's *Report on AIDS Testing* was released during the year. The Commission continues to examine the areas of drug and alcohol, genetic, and psychological testing in a number of different contexts, like the workplace, schools, and other institutional settings. The projects will consider when and how to balance an individual's right to privacy and the public's right to information.

Coroners' Inquests

Originally, the Commission initiated a project on both inquiries under the *Public Inquiries Act* and inquests under the *Coroners Act*. Subsequently, however, it was decided to publish separate reports. Our *Report on Public Inquiries* was released during the past year, and work continues on the project on coroners' inquests. The project will examine the tension between pursuit of the public interest and, under certain circumstances, the protection of persons suspected of wrongdoing. The project Director is Professor Allan Manson, of the Faculty of Law, Queen's University.

Charities

Following a reference from the Attorney General, the Commission commenced a study of the law of charities in Ontario. The Project Director is Professor David Stevens, of the Faculty of Law, McGill University.

In this project, the Commission is examining the status, legal form, sources and uses of revenue, and supervision of charities. Among the specific issues canvassed are the following: (1) the type of activity that should benefit from the advantages accorded to charities; (2) whether organizations aimed at accomplishing political purposes should be considered charitable; (3) whether it is appropriate that charities be created by means of different legal forms (trusts, corporations, and unincorporated associations); (4) whether the investment powers of charities should be subject to restriction; (5) whether charities should be entitled to own for-profit organizations or to carry on

business directly; (6) whether charitable fundraising activities should be controlled; and (7) who should be responsible for regulating charities, and by what means.

Basic Principles of Land Law

Three research papers, containing recommendations for reform of the basic principles of land law, have been prepared and considered by the Commission over the course of the project. Professor T.G. Youdan, of Osgoode Hall Law School, York University, has been retained to prepare a report to the Commission dealing with future interests, co-ownership, and easements.

Equity and Equality

This study paper will explore the interrelationship between the concept of equality and special equity programs. Recently, there has been a series of legal challenges to programs aimed at redressing various forms of systemic discrimination. These cases have involved the interpretation of section 15(2) of the *Canadian Charter of Rights and Freedoms* and/or the exemption provisions for special programs in human rights legislation. One of the major sources of confusion derives from continued adherence to a formal understanding of equality that conceptualizes equity programs as exceptions rather than expressions of equality.

This study paper is being prepared by Professor Colleen Sheppard, of the Faculty of Law, McGill University.

Powers of the Ontario Film Review Board

The project will focus on the approval and classification powers of the Ontario Film Review Board pursuant to Ontario's *Theatres Act*. It will briefly examine the history of the Board, within the context of the broader historical evolution of film classification and censorship in Canada and other jurisdictions. It will discuss the purposes animating the institution and continuation of the Board, and analyze whether these purposes are met by both the theory and practices of the Board. A constitutional analysis of the Board's approval and classification functions will also be undertaken. The report will conclude with proposals for reform to the Act as necessary.

The Retroactive Operation of Judgments

The recent decision of the Supreme Court of Canada in *De Savoye v. Morguard Investments Ltd.* changed the law relating to the enforcement of foreign judgments. The British Columbia Supreme Court in *Clarke v. Lo Bianco* reinforced the Supreme Court's decision, but in doing so, highlighted a problem implicit in the decision. In this project, the Commission examines the issue of the retroactive operation of judgments. At issue is the hardship that might be caused to a defendant because of a change in the law occurring after reasonable reliance was placed on the previous law. The study will consider the range of possible responses to the problem, including statutory directions, judicially developed suggestions, and tools such as special costs rules. The Project Director is John Swan, of the Ontario Bar.

APPENDIX A

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report
Report No. 1 [The Rule Against Perpetuities]	1965
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966
Report No. 2 [The Wages Act: Assignment of Wages]	1965
Report No. 3 on Personal Property Security Legislation	1965
Report No. 3A on Personal Property Security Legislation	1966
Report on The Evidence Act: Admissibility of Business Records	1966
Report on The Mechanics' Lien Act	1966
Supplementary Report on The Mechanics' Lien Act	1967
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966
Report on The Execution Act: Exemption of Goods from Seizure	1966
Report on the Law of Condominium	1967
Report on the Basis for Compensation on Expropriation	1967
Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	1968
Annual Report 1967	1968
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968
Report on The Protection of Privacy in Ontario	1968
Report on Section 183 of The Insurance Act	1968
Report on Trade Sale of New Houses	1968
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968

Title	Date of Report
Report on the Limitation of Actions	1969
Second Annual Report 1968	1969
Report on the Age of Majority and Related Matters	1969
Report on the Status of Adopted Children	1969
Report on Family Law, Part I: Torts	1969
Report on Section 20 The Mortgages Act	1970
Report on Family Law, Part II: Marriage	1970
Third Annual Report 1969	1970
Report on Actions Against Representatives of Deceased Persons	1970
Report on the Coroner System in Ontario	1971
Report on Sunday Observance Legislation	1971
Report on Land Registration	1971
Fourth Annual Report 1970	1971
Report on The Change of Name Act	1971
Report on The Mortgages Act, Section 16	1971
Report on Development Control	1971
Report on Powers of Attorney	1972
Report on Occupiers' Liability	1972
Report on Consumer Warranties and Guarantees in the Sale of Goods	1972
Report on Review of Part IV of The Landlord and Tenant Act	1972
Fifth Annual Report 1971	1972
Report on the Non-Possessory Repairman's Lien	1972
Report on the Administration of Ontario Courts, Part I	1973
Sixth Annual Report 1972	1973
Report on the Administration of Ontario Courts, Part II	1973
Report on Family Law, Part III: Children	1973
Report on The Solicitors Act	1973
Report on Motor Vehicle Accident Compensation	1973
Report on the Administration of Ontario Courts, Part III	1973
Report on Family Law, Part IV: Family Property Law	1974

Title	Date of Report
Report on Family Law, Part V: Family Courts	1974
Seventh Annual Report 1973	1974
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974
Eighth Annual Report 1974	1975
Report on Family Law, Part VI: Support Obligations	1975
Report on Mortmain, Charitable Uses and Religious Institutions	1976
Report on Landlord and Tenant Law	1976
Report on the Law of Evidence	1976
Ninth Annual Report 1975	1976
Report on Changes of Name	1976
Report on the Impact of Divorce on Existing Wills	1977
Tenth Annual Report 1976	1977
Eleventh Annual Report 1977	1978
Report on Sale of Goods	1979
Twelfth Annual Report 1978	1979
Report on Products Liability	1979
Thirteenth Annual Report 1979	1980
Report on the Enforcement of Judgment Debts and Related Matters, Part I	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981
Fourteenth Annual Report 1980-81	1981
Report on Witnesses Before Legislative Committees	1981
Report on Class Actions	1982
Fifteenth Annual Report 1981-82	1982
Report on the Enforcement of Judgment Debts and Related Matters, Part IV	1983
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983
Report on Powers of Entry	1983
Sixteenth Annual Report 1982-83	1983
Report on the Law of Trusts	1983
Seventeenth Annual Report 1983-84	1984

Title	Date of Report
Report on Human Artificial Reproduction and Related Matters	1985
Twentieth Anniversary Report 1984-85	1985
Twenty-First Annual Report 1985-86	1986
Report on Political Activity, Public Comment and Disclosure by Crown Employees	1986
Report on Amendment of the Law of Contract	1987
Report on the Law of Mortgages	1987
Twenty-Second Annual Report	1987
Report on Compensation for Personal Injuries and Death	1987
Report on Contribution Among Wrongdoers and Contributory Negligence	1988
Report on Timesharing	1988
Twenty-Third Annual Report 1987-88	1988
Study Paper on Wrongful Interference with Goods	1989
Report on the Law of Standing	1989
Report on Covenants Affecting Freehold Land	1989
Report on Liability of the Crown	1989
Report on Damages for Environmental Harm	1990
Report on the Basis of Liability for Provincial Offences	1990
Report on Administration of Estates of Deceased Persons	1991
Report on Exemplary Damages	1991
1991 Ontario Law Reform Commission Report	1991
Appointing Judges: Philosophy, Politics and Practice	1991
Report on Child Witnesses	1991
Report on Testing for AIDS	1992
Report on Public Inquiries	1992
Summary of Recommendations	1992
Annual Report 1991-92	1992

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APPENDIX B

IMPLEMENTATION OF THE REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report No. 1 [The Rule Against Perpetuities]	1965	<i>The Perpetuities Act, 1966,</i> S.O. 1966, c. 113
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966	<i>do.</i>
Report No. 2 [The Wages Act: Assignment of Wages]	1965	<i>The Wages Amendment Act,</i> 1968, S.O. 1968, c. 142
Report No. 3 on Personal Property Security Legislation	1965	<i>The Personal Property Security Act, 1967, S.O.</i> 1967, c. 72
Report No. 3A on Personal Property Security Legislation	1966	<i>do.</i>
Report on The Evidence Act: Admissibility of Business Records	1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51,</i> s. 1
Report on The Mechanics' Lien Act	1966	<i>The Mechanics' Lien Act,</i> 1968-69, S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	1967	<i>do.</i>
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966	See <i>The Mechanics' Lien Amendment Act, 1975,</i> S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act,</i> 1975, S.O. 1975, c. 44 <i>The Public Works Creditors Payment Repeal Act, 1975, S.O.</i> 1975, c. 45
Report on The Execution Act: Exemption of Goods from Seizure	1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>
Report on the Law of Condominium	1967	<i>The Condominium Act,</i> 1967, S.O. 1967, c. 13

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on the Basis for Compensation on Expropriation	1967	<i>The Expropriations Act, 1968-69, S.O. 1968-69, c. 36</i>
Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	1968	<i>The Sandwich Windsor and Amherstburg Railway Amendment Act, 1968, S.O. 1968, c. 120</i>
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968	<i>Divorce Act, S.C. 1967-68, c. 24, s. 26</i>
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i>
Report on The Protection of Privacy in Ontario	1968	See <i>The Registry Amendment Act, 1978, S.O. 1978, c. 8, s. 1</i>
Report on Trade Sale of New Houses	1968	See <i>The Consumer Reporting Act, 1973, S.O. 1973, c. 97</i> See <i>The Ontario New Home Warranties Plan Act, 1976, S.O. 1976, c. 52</i>
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968	<i>The Landlord and Tenant Amendment Act, 1968-69, S.O. 1968-69, c. 58</i>
Report on Limitation of Actions	1969	See <i>The Highway Traffic Amendment Act (No. 2), 1975, S.O. 1975, c. 37</i> <i>The Fatal Accidents Amendment Act, 1975, S.O. 1975, c. 38</i> <i>The Trustee Amendment Act, 1975, S.O. 1975, c. 39</i>
Report on the Age of Majority and Related Matters	1969	<i>The Age of Majority and Accountability Act, 1971, S.O. 1971, c. 98</i>
Report on the Status of Adopted Children	1969	<i>The Child Welfare Amendment Act, 1970, S.O. 1970, c. 96, s. 23</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Family Law, Part I: Torts	1969	<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	1970	<i>The Mortgages Amendment Act, 1970</i> , S.O. 1970, c. 54, s. 1
Report on Family Law, Part II: Marriage	1970	<i>The Civil Rights Statute Law Amendment Act, 1971</i> , S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act, 1977</i> , S.O. 1977, c. 42
Report on Actions Against Representatives of Deceased Persons	1970	<i>The Trustee Amendment Act, 1971</i> , S.O. 1971, c. 32, s. 2
Report on the Coroner System in Ontario	1971	<i>The Coroners Act, 1972</i> , S.O. 1972, c. 98
Report on Sunday Observance Legislation	1971	<i>The Retail Business Holidays Act, 1975</i> , S.O. 1975 (2nd Session), c. 9 <i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 134
Report on Land Registration	1971	See <i>The Corporations Tax Amendment Act (No. 2), 1979</i> , S.O. 1979, c. 89 <i>Land Registration Reform Act, 1984</i> , S.O. 1984, c. 32
Report on The Change of Name Act	1971	<i>The Change of Name Amendment Act, 1972</i> , S.O. 1972, c. 44 <i>Change of Name Act, 1986</i> , S.O. 1986, c. 7
Report on Development Control	1971	<i>The Planning Amendment Act, 1973</i> , S.O. 1973, c. 168, s. 10
Report on Powers of Attorney	1972	<i>The Powers of Attorney Act, 1979</i> , S.O. 1979, c. 107 <i>Powers of Attorney Amendment Act, 1983</i> , S.O. 1983, c. 74

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>Mental Health Amendment Act, 1983, c. 75</i>
Report on Occupiers' Liability	1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
Report on Review of Part IV of The Landlord and Tenant Act	1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
Report on the Non-Possessory Repairman's Lien	1972	<i>Repair and Storage Liens Act, 1989, S.O. 1989, c. 17 (partial implementation)</i>
Report on the Administration of Ontario Courts, Part I	1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i>
Report on the Administration of Ontario Courts, Part II	1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 162</i> See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
Report on Family Law, Part III: Children	1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i> <i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i> <i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i> See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i>
Report on The Solicitors Act	1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 214(6)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on the Administration of Ontario Courts, Part III	1973	<p><i>The Judicature Amendment Act, 1975</i>, S.O. 1975, c. 30 (partial implementation)</p> <p>See <i>The Administration of Courts Project Act, 1975</i>, S.O. 1975, c. 31</p> <p><i>The Small Claims Courts Amendment Act, 1977</i>, S.O. 1977, c. 52 (partial implementation)</p>
Report on Family Law, Part IV: Family Property Law	1974	<p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40 (partial implementation)</p> <p><i>The Family Law Reform Act, 1978</i>, S.O. 1978, c. 2 (partial implementation)</p> <p><i>Family Law Act, 1986</i>, S.O. 1986, c. 4 (partial implementation)</p> <p>See <i>The Land Titles Amendment Act, 1978</i>, S.O. 1978, c. 7</p>
Report on Family Law, Part V: Family Courts	1974	<p>See <i>The Unified Family Court Act, 1976</i>, S.O. 1976, c. 85</p> <p><i>The Children's Probation Act, 1978</i>, S.O. 1978, c. 41 (partial implementation)</p>
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974	<p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40, s. 42</p>
Report on Family Law, Part VI: Support Obligations	1975	<p><i>The Succession Law Reform Act, 1977</i>, S.O. 1977, c. 40 (partial implementation)</p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Mortmain, Charitable Uses and Religious Institutions	1976	<i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i> <i>The Religious Organizations' Lands Act, 1979, S.O. 1979, c. 45</i>
		<i>The Anglican Church of Canada Act, 1979, S.O. 1979, c. 46</i>
		<i>The Registry Amendment Act, 1979, S.O. 1979, c. 94, s. 17</i>
		<i>Charities Accounting Amendment Act, 1982, S.O. 1982, c. 11</i>
		<i>Mortmain and Charitable Uses Repeal Act, 1982, S.O. 1982, c. 12, s. 1(1)</i>
Report on Landlord and Tenant Law	1976	<i>The Residential Tenancies Act, 1979, S.O. 1979, c. 78 (partial implementation)</i>
Report on Changes of Name	1976	<i>The Change of Name Amendment Act, 1978, S.O. 1978, c. 28</i>
		<i>The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)</i>
		<i>Change of Name Act, 1986, S.O. 1986, c. 7 (partial implementation)</i>
		<i>Vital Statistics Amendment Act, 1986, S.O. 1986, c. 9 (partial implementation)</i>
		<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i>
Report on the Impact of Divorce on Existing Wills	1977	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i>
		<i>Wages Amendment Act, 1983, S.O. 1983, c. 68 (partial implementation)</i>
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981	<i>Proceedings Against the Crown Amendment Act, 1983, S.O. 1983, c. 88</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 177 (partial implementation)
		Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981	Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983	<i>Creditors' Relief Amendment Act, 1985</i> , S.O. 1985, c. 1 (partial implementation)
Report on Compensation for Personal Injuries and Death	1987	<i>Courts of Justice Amendment Act, 1989</i> , S.O. 1989, c. 67 (partial implementation)

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APPENDIX C

ROUNDTABLE DISCUSSIONS OF THE ONTARIO LAW REFORM COMMISSION

In 1991, the Ontario Law Reform Commission inaugurated a series of Roundtable discussions to examine various issues in law and social policy reform. The purpose of these discussions is to foster debate on adapting Ontario's law and legal system to the challenges of contemporary social developments. To this end, people with expertise and experience in a variety of areas are brought together to explore and debate legal policy in Ontario. During the past year, the Commission held five Roundtable discussions, discussed below.

Streamlining the Civil Litigation Process

The Commission held its first Roundtable discussion on May 16, 1991. The discussion, which was based on a paper prepared by Alan Lenczner, Q.C., concerned methods of streamlining the civil litigation process. From both the paper and the discussion that followed, it was generally agreed that, under the present civil litigation process, cases take too long to get to trial, and are too expensive for most clients. As a result, a number of people have been, and are being, deprived of access to court. In addition to various specific recommendations, it was recommended that lawyers proceed within certain time periods, thus ensuring that most cases would reach trial within the times set by the process. This Roundtable discussion was attended by the following: Peter Atkinson; Professor Carl Baar; Thomas Bastedo; Sheila Block; Brian Bellmore; Paul Cavalluzzo; His Honour Judge James Chadwick; Linda Dranoff; Stephen Goudge, Q.C.; The Honourable Mr. Justice John Jennings; John I. Laskin; Alan Lenczner, Q.C.; Patty McQuigan; Anne Molloy; Eric Murray; Professor Kent Roach; Harriet Sachs; Sandra Simpson; James Spence; Harvey Strosberg, Q.C.; Gary Watson, Q.C.; and Janet Wilson.

Aspects of Law Reform

The Commission's second Roundtable discussion, focussing on aspects of law reform, was held on September 12, 1991, in honour of Madam Justice Bertha Wilson. It was argued that law can never be completely free from politics, and it was suggested that, although the Ontario Law Reform

Commission makes legal recommendations only, these recommendations can never be free of a socio-political context. The Roundtable explored the origins, implementation and function of legal reforms with a multi-disciplinary group of people. The following persons attended this Roundtable: Michael Adams; Professor Alfred W. Blumrosen; Professor Thomas Cowan; Robert Fulford; Anne Golden; Professor Donna Greschner; Professor Allan C. Hutchinson; Stien K. Lal; Professor Roderick A. Macdonald; The Honourable Flora MacDonald; Carlton A. Masters; Maureen O'Neil; The Honourable Melvin L. Rothman; Haroon Siddiqui; Helen Sinclair; Elaine Todres; and The Honourable Bertha Wilson.

Role of Legal Clinics

At a Roundtable discussion held on October 28, 1991, the role and functions of legal clinics were discussed in order to determine the future of legal clinics. It was generally recognized that legal clinics provide a useful service to the community, although their usefulness is diminished somewhat by their limited resources and by their heavy case-load. It was also generally agreed that all three types of clinic—those that provide a general case by case service, those that provide a specialized service on a case by case basis, and those that provide access to a variety of professional services—have their function and should continue to exist. But a consensus emerged that the most effective kind of legal clinic was one that was multi-service, and provided access to health, social work as well as legal services. This Roundtable discussion was attended by the following: Lenny Abramowicz; Robert Armstrong; Annie Bunting; Shelley Cuthbertson; Philip Epstein, Q.C.; Douglas J. Ewart; Cathy Fooks; The Honourable Mr. Justice S. Grange; Judith Keene; Joanna Kuras; Her Honour Judge Marion E. Lane; Donald C. MacDonald; Joan Milling; Rob Milling; Janet Mosher; Professor Joanne St. Lewis; James M. Spence, Q.C.; Andrea Walker; and Professor Fred Zemans.

Arts, Culture and the Constitution

The subject of the Roundtable discussion held on December 12, 1991, was the role of the arts and culture in the context of the Constitution. This discussion was about the importance of preserving and promoting the arts in Canada and what governmental arrangements could best achieve their diverse expansion. It was agreed that the best funding system would be one in which both the federal and provincial governments have the ability to provide funding, and in which all funding takes place in an arms-length environment. The following persons attended this Roundtable: Catherine

Allman; Garry Conway; Susan Crean; Professor Nathalie Des Rosiers; Robert Fulford; Michal Ben-Gera; Sheila Greenspan; Marion Hebb; Peter Herrndorf; Diane Leblanc; Trina McQueen; Charles Pachter; David Parsons; Professor Marilyn L. Pilkington; Tim Porteous; Angela Rebeiro; Gwen Setterfield; Cathy Smalley; Jini Stolk; John Terry; Dr. Ronald Watts; Professor Lorraine Weinrib; Professor John Weinzweig; and Joyce Zemans.

Implications of a Social Charter in a New Constitution

On January 30, 1992, the Commission held a Roundtable discussion to consider the implications of the entrenchment of a social charter in the Constitution. It was the general opinion of the participants that this issue arose primarily to ensure that the social structure of Canada survives. The participants discussed the form that a social charter should take, and whether it should be enforceable against the government, or merely a statement of principle. The following persons attended this discussion: Michal Ben-Gera; Professor David Cameron; Orville Endicott; Cathy Fooks; John Foster; Professor Rob Howse; Professor David Hulchanski; Professor Martha Jackman; Professor Jane Jenson; Brian Kelsey; Diane Mandell; Professor Errol Mendes; Penny Moss; Angelo Nikias; Bruce Porter; Judy Rebick; Barbara Rutherford; Professor Craig Scott; and John Terry.

APPENDIX D

JUDICIAL AND ACADEMIC REFERENCES TO REPORTS OF THE ONTARIO LAW REFORM COMMISSION*

Report No. 1 [The Rule Against Perpetuities] (1965)

Sutherland Estate v. Dyer (1991), 4 O.R. (3d) 168, 82 D.L.R. (4th) 432
Re Tilbury West Public School Board and Hastie, [1966] 2 O.R. 20

Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]

Sutherland Estate v. Dyer (1991), 4 O.R. (3d) 168, 82 D.L.R. (4th) 432

Report No. 3 on Personal Property Security Legislation (1965)

Harvey Hubbell Canada Inc. v. Thornhurst Corp. (1989), 69 O.R. (2d) 53
Bank of Nova Scotia v. McIvor (1986), 57 O.R. (2d) 501

Report on The Mechanics' Lien Act (1966)

National Defence Credit Union Ltd. v. Labine, [1987] O.J. No. 1366
George Wimpey Canada Ltd. v. Peelton Hills Ltd. (1982), 35 O.R. (2d)
787, 132 D.L.R. (3d) 732
Otis Elevator Co. Ltd. v. Commonwealth Holiday Inns of Canada Ltd.
(1975), 8 O.R. (2d) 297, 57 D.L.R. (3d) 681

Supplementary Report on The Mechanics' Lien Act (1967)

George Wimpey Canada Ltd. v. Peelton Hills Ltd. (1982), 35 O.R. (2d)
787, 132 D.L.R. (3d) 732

* This is a non-exhaustive list of articles and cases in which the Commission's reports have been reviewed or cited.

Report on The Law of Condominium (1967)

- Re 511666 Ontario Ltd. and Confederation Life Insurance Co.* (1985), 50 O.R. (2d) 181
Frontenac Condominium Corp. No. 1 v. Joe Macciocchi & Sons Ltd. (1974), 3 O.R. (2d) 331, 45 D.L.R. (3d) 347
Re Lambert Island Ltd. and Attorney-General of Ontario, [1972] 2 O.R. 659, 26 D.L.R. (3d) 391

Report on the Basis for Compensation on Expropriation (1967)

- Re City of Windsor and Larsen* (1980), 29 O.R. (2d) 669, 114 D.L.R. (3d) 477
Re Laidlaw and Municipality of Metropolitan Toronto, [1978] 2 S.C.R. 736, 87 D.L.R. (3d) 161

Report on the Proposed Adoption in Ontario of The Uniform Wills Act (1968)

- Re Nicholls* (1987), 57 O.R. (2d) 763, 34 D.L.R. (4th) 321

Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies (1968)

- Re Boyd and Earl & Jennie Lohn Ltd.* (1984), 47 O.R. (2d) 111, 11 D.L.R. (4th) 265
Reference re Residential Tenancies Act (1980), 26 O.R. (2d) 609, 105 D.L.R. (3d) 193
Gaul v. King (1979), 33 N.S.R. (2d) 60

Report on Limitation of Actions (1969)

- McEvoy, Case Comment on *Clark v. Naqvi* (1989), 99 N.B.R. (2d) 271, 250 A.P.R. 271, (1990), 104 N.B.R. (2d), 261 A.P.R. 237
Murphy v. Welsh (1991), 3 O.R. (3d) 182, 81 D.L.R. (4th) 475
Ontario Teachers' Pension Plan Board v. York University (1990), 74 O.R. (2d) 714, 72 D.L.R. (4th) 253
Lee v. Ontario (Minister of Transportation & Communications) (1990), 72 O.R. (2d) 343
Comite d'environnement de La Baie Inc. v. Societe d'electrolyse et de chimie Alcan Ltee. (1990), 29 Q.A.C. 251

Hart v. Hart (1990), 27 R.F.L. (3d) 419, [1990] O.J. No. 1498
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C.C. Fraser Building Supplies Ltd. v. Ontario Hydro (1986), 55 O.R. (2d)
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Re Walker and Bostwick (1986), 34 D.L.R. (4th) 310
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Schrenk v. Schrenk (1982), 36 O.R. (2d) 480
Hartwick v. MacIntyre (1982), 35 O.R. (2d) 119, 131 D.L.R. (3d) 333
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APPENDIX E

ONTARIO LAW REFORM COMMISSION ADVISORY BOARD

Margaret Atwood

Joanne Campbell
General Manager
Metro Toronto Housing Co. Ltd.

Mr. Justice Marvin Catzman
Court of Appeal for Ontario

Marshall Cohen
C.E.O.
The Molson Companies Ltd.

Anne R. Dubin
Tory, Tory, DesLauriers & Binnington

Her Honour Judge Mary F. Dunbar
Ontario Court of Justice
(Provincial Division)

Professor Margrit Eichler
Sociology Department
The Ontario Institute for Studies in Education

Catherine Frazee
Chief Commissioner
Ontario Human Rights Commission

Robert Fulford

Professor Phillipe Garigue
International Studies,
Glendon College

Edward L. Greenspan
Greenspan, Rosenberg

Mr. Justice Jack D. Ground
Ontario Court of Justice
(General Division)

Madame Justice Donna J. Haley
Ontario Court of Justice
(General Division)

Wilson Head
Past President
Urban Alliance on Race Relations

Gordon Henderson
Gowling, Strathy & Henderson

Peter Herrndorf
Chair and C.E.O.
TV Ontario

Peter W. Hogg
Professor of Law,
Osgoode Hall Law School

Dr. Ron Ianni
President
University of Windsor

Roberta Jamieson
Ombudsman

Mr. Justice John Jennings
Ontario Court of Justice
(General Division)

Stephen Lewis

Marie Marchand
Project Co-ordinator
Women into Apprenticeship

Associate Chief Justice R. Roy McMurtry
Ontario Court of Justice
(General Division)

Associate Chief Justice John Morden
Court of Appeal for Ontario

J. Robert S. Prichard
President
University of Toronto

Mr. Justice Ed Saunders
Ontario Court of Justice
(General Division)

Graham Scott
McMillan, Binch

James M. Spence
Tory, Tory, DesLauriers & Binnington

Janet Stewart
Lerner & Associates

Professor Katherine Swinton
Faculty of Law
University of Toronto

Associate Chief Judge Robert J.K. Walmsley
Special Adviser to Chief Judge
Ontario Court of Justice
(Provincial Division)

APPENDIX F

GROUPS AND ORGANIZATIONS CONSULTED BY THE ONTARIO LAW REFORM COMMISSION

In its projects, the Ontario Law Reform Commission consults regularly with members of the Bench, the Bar, the academic community, provincial and federal government ministries and agencies, and various persons, organizations and governmental institutions in other jurisdictions. In addition to the foregoing, during 1991-92 the Commission consulted with a wide range of groups and organizations, including the following:

Addiction Research Foundation
Adjudication Services Limited
Advocacy Resource Centre for the Handicapped
AIDS Action Now!
The AIDS Committee of Ottawa
AIDS Committee of Toronto
Association of Local Official Health Agencies
Barb Butler & Associates
Canadian Auto Workers
Canadian Civil Liberties Association
Canadian Human Rights Commission
Canadian Labour Congress
Canadian Medical Association
Chief Coroner of New Brunswick
Chief Coroner of Ontario
Chief Medical Examiner of Alberta
Chief Medical Examiner of Manitoba
Educational Testing Services
Employment Equity Commissioner
Federal Centre for AIDS
Haemophilia Services
Hassle Free Clinic

Imperial Oil Limited
Information and Privacy Commissioner/Ontario
McGill Centre for Medicine, Ethics and Law
Ontario Hospital Association
Ontario Human Rights Commission
Ontario Medical Association
Pay Equity Commission
Pay Equity Hearings Tribunal
Privacy Commissioner of Canada
Quebec Human Rights Commission
Toronto-Dominion Bank

APPENDIX G

OFFICERS AND STAFF

ONTARIO LAW REFORM COMMISSION

Chair	Rosalie S. Abella, BA, LLB
Vice Chair	Richard E.B. Simeon, PhD
Commissioners	Earl A. Cherniak, QC, BA, LLB John D. McCamus, MA, LLM Margaret A. Ross, BA (Hon), LLB
Counsel	J. Jody Morrison, BA (Hon), LLB, LLM Ronda F. Bessner, BA (Hon), BCL, LLB, LLM Christine B. Henderson, BA, LLB Lisa Brownstone, BA, LLB, LLM Donald F. Bur, LLB, LLM, BCL, PhD Larry M. Fox, LLB, Senior Counsel, is on secondment to the Policy Development Division, Ministry of the Attorney General, until March 31, 1993.
Visiting Scholar	Professor Roderick A. Macdonald, BA, LLB, LLL, LLM McGill University
Chief Administrator	Mary Lasica, BAA
Administrative Assistant	Annetta Charles, BA
Secretary to Chair	Tina Afonso
Librarian	Carol Frymer, BA
Secretary to Chief Administrator	Mary M. O'Hara
Secretaries to Counsel	D. M. Halyburton Cora Calixterio Sharon Hattori
Receptionist	Trina Richard, BA (Hon)

The past year has seen a number of significant changes in the staff of the Ontario Law Reform Commission. Departing from the Commission during the year were Melvin A. Springman, General Counsel and Director of Research; Judith A. Bellis, Counsel; Mordechai Ben-Dat, Counsel; Anne McGarrigle, Secretary and Administrative Officer; Beverley G. Woodley, Administrative Assistant; and Christopher Hughes, Librarian. The Commission wishes to express its appreciation to each of these individuals for their dedication and their contribution to the work of the Commission. The Commission wishes to record its particular appreciation to Mr. Springman for his many years of devoted service to the Commission.

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ANNUAL REPORT 1992-93

ONTARIO LAW REFORM COMMISSION



ANNUAL REPORT 1992-93

ONTARIO LAW REFORM COMMISSION



The Ontario Law Reform Commission was established by the Ontario Government in 1964 as an independent legal research institute. It was the first Law Reform Commission to be created in the Commonwealth. It recommends reform in statute law, common law, jurisprudence, judicial and quasi-judicial procedures, and in issues dealing with the administration of justice in Ontario.

Commissioners

John D. McCamus, MA, LLB, LLM, *Chair*

Richard E.B. Simeon, PhD, *Vice Chair*

Nathalie Des Rosiers, LLB, LLM

Sanda Rodgers, BA, LLB, BCL, LLM

Counsel

J.J. Morrison, BA (Hon), LLB, LLM

Donald F. Bur, LLB, LLM, BCL, PhD

Sarah M. Boulby, MA, LLB

Barbara J. Hendrickson, MA, LLB

Chief Administrator

Mary Lasica, BAA

The Commission's office is located on the Eleventh Floor at 720 Bay Street, Toronto, Ontario, Canada, M5G 2K1. Telephone (416) 326-4200. FAX (416) 326-4693.

Ce rapport est aussi disponible en français.



**Ontario
Law Reform
Commission**

To The Honourable Marion Boyd
Attorney General for Ontario

Dear Attorney:

We have the honour to present the 1992-93 Annual Report of the Ontario Law Reform Commission, for the period ending March 31, 1993, in accordance with section 2(3) of the *Ontario Law Reform Commission Act*, R.S.O. 1990.

John D. McCamus
Chair

Richard E. B. Simeon
Vice Chair

Nathalie Des Rosiers
Commissioner

Sanda Rodgers
Commissioner

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INTRODUCTION

For the Ontario Law Reform Commission, as for many other public institutions, 1992-93 was a challenging year. It will occasion no surprise to those who have any familiarity with the depth of the fiscal crisis in which our governments now must operate to learn that the Commission's role, mandate and record of achievement has been subjected to careful scrutiny and reappraisal during the past year. This, of course, is as it should be. A second and, to some extent related, series of challenges arose from the fact that this reassessment was accompanied by an unusually high number of changes in the composition of the Commission and its staff. In March of 1992, as noted in our last Annual Report, our Chair was appointed to the Court of Appeal for Ontario. Shortly thereafter, the terms of office of two other Commissioners concluded. Quite understandably, it was considered inappropriate to appoint a Chair and new Commissioners during a period when the future role of the Commission was under consideration. Thus, at a critical juncture in its history, the Commission lacked its usual complement of Commissioners. As documented elsewhere in this Annual Report, several changes in the composition of the Commission's staff also occurred during this period. Despite these changes and uncertainties, the Commission completed work on a number of important projects while continuing work on others.

In the Commission's contribution to the deliberations concerning its future, attention was drawn, of course, to the Commission's strong record of achievement in the field of law reform. Since its establishment in 1964, the Commission has produced reports on a host of law reform topics. From its earliest days, the Commission tackled a broad range of topics from the highly technical subject of the reform of the Rule Against Perpetuities (the subject of its first report) to its early work on the socially important and legally complex question of the reform of matrimonial property law.

Although the Commission's agenda has evolved with changing times, it continues to reflect this range of interests. The work of refining and improving more technical aspects of the law continues. In recent years, reports on Contribution Among Wrongdoers and Contributory Negligence, Standing, Liability of the Crown, and Administration of Estates of Deceased Persons illustrate this feature of our work. As well, the Commission has continued to tackle subjects that both involve complex legal issues, and touch upon broader social issues. Some recent examples are the awarding of Damages for Environmental Harm, the admissibility of the testimony of Child Witnesses, and the linked series of projects on testing including the

recently published report on Testing for AIDS. The Commission has shown a continuing capacity to tackle questions that address controversial questions of contemporary significance in the context of law reform.

As the appendices to this Report illustrate, a large number of the Commission's recommendations have found their way into legislation. Further, Commission reports and recommendations are widely cited in judicial opinions, in the work of other law reform agencies, in professional journals, and in a wide range of government reports both in Canada and abroad. It is not too much to claim that the Commission has made a signal contribution to the evolution of the law in Ontario, and to ensuring greater harmony between the legal system and the evolving society which it serves.

Notwithstanding this strong record of accomplishment, there were a number of reasons for reassessing the Commission's role. In addition to the financial constraints already alluded to, the context of law reform has changed over the years since 1964 in ways that make it appropriate to articulate and assess the nature of the Commission's role. Law reform has become much more complicated, and there are many more players in the field. When the Ontario Law Reform Commission was established, there was no distinct policy branch within the Ministry of the Attorney-General. Today it has a very strong policy branch, and research and policy analysis capabilities are entrenched throughout the government. Non-governmental policy research institutes, whether independent or university-based, have become more numerous. Faculty in law schools have become more research-oriented. The number and scope of public interest groups focused, at least in part, on legal issues have mushroomed. They have often become ardent exponents of law reform, and their work is often supported by sophisticated legal analysis. There is no lack of actual or would-be law reformers in contemporary Ontario. Against this background, it may legitimately be asked whether the Commission continues to occupy a unique and valuable niche in the field of law reform.

In our view, an independent Commission, linked to, but at arm's length from the government offers a number of advantages that are not easily provided by other bodies, whether inside or outside government. In comparison with policy research within the government itself, it can work on questions of the medium to longer term, which government policy groups, preoccupied by more immediate issues, may simply not have time to deal with. It can work on questions more independent of the current government's political agenda than can a government ministry. The Commission is able to address problems that, while of vital importance to the province, may be too contentious for the government to be seen to be addressing. Conversely, it can explore areas that are not matters of current political controversy, but in which modernization or clarification of the law can have very important long-term benefits for citizens. Alternatively, it can carry out studies in which

the government itself may have an internal conflict, since it is its own procedures, policies and institutional interests which are in question.

In contrast to advocacy or other interest groups, the Commission is able to focus on the more general public interest, and give greater voice to the interests of those without the strength or resources to organize effectively. It is able to weigh the arguments of contending groups and test them against careful research. In contrast to university-based researchers, the Commission is better placed to link research to public policy. These characteristics enable the Commission to bring a unique set of perspectives to law reform, performing roles which complement, but do not duplicate, those of other actors in the policy arena. The continuing need for law reform activity of this kind was articulated by the Manitoba Law Reform Commission, faced with the need to reassess its own role, in the following terms:

Common law and statute law have traditionally been unable to keep up fully with ever-changing social conditions.... Courts are only able to affect changes in the law if and when cases in troublesome areas happen to come before them; legislatures are inevitably preoccupied with issues having greater political interest.... Without a permanent body charged with the task, large areas of the law requiring change would not attract the attention of politicians or government departments. Old inequities would be perpetuated; new inequities would arise.

In our view, then, a compelling rationale can be identified in contemporary circumstances for the continued establishment of law reform agencies such as the Ontario Law Reform Commission. Thus it was most reassuring that the Ministry of the Attorney General, after due deliberation, determined to maintain the Commission with its current independent status and statutory mandate. Unsurprisingly, and in common with many other public agencies, however, the Commission endured a substantial budget reduction which took effect at the end of the reporting period. Nonetheless, the renewed support of the Ministry for the work of the Commission is most encouraging and manifests a strong commitment on the Ministry's part to the cause of law reform.

An examination of the Commission's past record leads us to be ever more appreciative of the achievements of our predecessors. It is particularly appropriate, at this time, to record our appreciation for the splendid contributions of Madam Justice Rosalie S. Abella as Chair from 1988 to 1992, and of Earl A. Cherniak Q.C. and Margaret A. Ross who served as Commissioners from 1987 to 1992. Their successors, Professor John D. McCamus, of Osgoode Hall Law School, York University, as Chair and Professors Nathalie Des Rosiers and Sanda Rodgers of the faculties of law of the University of Western Ontario and the University of Ottawa, respectively, who were appointed in early 1993, are well aware of the

outstanding work of these three Commissioners and of their collective contribution to the continued vitality and productivity of the Commission during their period of service. The members of the Commission and the broader community are much in their debt.

It is also fitting to mention at this time the splendid contribution of our fifth Commissioner, Professor Richard Simeon, of the Department of Political Science and the Faculty of Law of the University of Toronto, who served superbly as Acting Chair of the Commission during the period from May through December of 1992. Professor Simeon provided wise guidance and energetic leadership during an eventful period in the history of the Commission.

During the period covered by this report—April 1, 1992 to March 31, 1993—the Commission continued its work on the projects in process described later in this report, and completed two major reports and a study paper. The *Report on Drug and Alcohol Testing in the Workplace* was tabled in the Ontario Legislature on September 9, 1992. The *Report on the Powers of the Ontario Film Review Board* was tabled on November 12, 1992. In addition, on March 31, 1993, the Commission issued a study paper, prepared for the Commission by Professor Colleen Sheppard, of the Faculty of Law, McGill University, entitled *Study Paper on Litigating the Relationship Between Equity and Equality*. Finally, the Commission is pleased to note the enactment of the *Class Proceedings Act, 1992*, which implements many of the recommendations made in our 1982 *Report on Class Actions*.

As the Commission enters the new fiscal year, we look forward to a period in which program development will return to a prominent place on the Commission's agenda. In identifying our priorities for new initiatives, we anticipate building upon a number of initiatives taken by the Commission in recent years to strengthen our linkages and consultations with the various constituencies which it is the Commission's privilege to serve.

THE PROGRAM

A. COMPLETED PROJECTS

Report on Drug and Alcohol Testing in the Workplace

In the *Report on Drug and Alcohol Testing in the Workplace*, the Ontario Law Reform Commission recommends that the Ontario government enact legislation that specifically addresses the issue of drug and alcohol testing in the workplace. Mandatory testing has become a highly contentious issue in Canada, both provincially and federally. Pressure to require testing is likely to increase, in large part because of the initiatives and policies which have been introduced in the United States.

As the Report illustrates, the current legal framework does not adequately deal with the complex problems posed by workplace testing. The Commission recommends that the legislation that is promulgated ought to apply to private and public sector employees, to unionized as well as non-unionized workers, and to job applicants and current employees. Statutory provisions specifically directed to workplace testing will substantially reduce the uncertainty which persists respecting the appropriateness of testing employees in this province. This in turn will reduce the costs associated with instituting human rights actions, labour arbitration grievances, constitutional challenges, and other legal actions.

The Commission proposes that the legislature should ban the testing of bodily samples of all current and prospective employees in Ontario. The Commission makes this recommendation for several reasons. First, drug and alcohol testing constitutes a significant invasion of the privacy interests of employees. Such testing reveals confidential information unrelated to legitimate employer concerns. Second, the techniques currently used to analyze the bodily fluids of employees are incapable of detecting impairment. Consequently, the relationship between a positive test result and job performance is highly tenuous. A third reason for the ban on bodily sample testing is that there is no empirical evidence to support the proposition that drug abuse has become a significant problem in the Ontario workforce.

The Ontario Law Reform Commission is of the view that alternate measures can be introduced by management that do not involve the complex legal and ethical dilemmas posed by drug and alcohol testing. Behavioural evaluation of the impairment of employees in conjunction with employee assistance programs constitute effective methods of detecting and rehabilitating workers who have substance abuse problems. In cases in which impairment on the job poses a risk of physical injury or death to the

employee, to co-workers or to members of the public, performance testing of the employee is justified. Performance testing evaluates the psychomotor skills of employees by means of mechanical aptitude tests and computer programs. The Commission endorses performance testing as it is the least intrusive, most effective method of measuring impairment. In addition, performance testing detects impairment from any source, not simply drugs or alcohol. An employee who would be a safety hazard on any given day because of illness, fatigue, or personal stress can be identified. Moreover, unlike bodily fluid testing, performance testing provides immediate feedback. By identifying impaired employees before they begin their work, accidents, injuries and errors can be prevented, and thus, the safety of the public and other workers is enhanced.

It is the view of the Commission that these recommendations recognize the legitimate interests of employers, employees, and the public, in workplace safety and at the same time serve to protect the privacy and dignity of employees who earn their livelihood in Ontario.

Report on the Powers of the Ontario Film Review Board

In its *Report on the Powers of the Ontario Film Review Board*, the Ontario Law Reform Commission recommends changes to the classification and approval functions of the Board. The rapid expansion in technology in recent years has rendered film and video materials easily accessible to an increasing number of people. This increase in quantity of material is accompanied by a perception that many of the images and messages conveyed in these media are becoming more violent and degrading, and that more societal control over the content of the media is required. Various concerns have been expressed by members of the public—particularly parents, members of groups involved with victims of abuse and discrimination, artists, and members of the film and video industries. The aim of this Report is to assess how the Ontario Film Review Board's powers can be modified to make it a more effective regulator of films and videos.

The Commission sought to balance the need to protect freedom of speech and artistic expression with the desire to limit or control the distribution of violent, degrading, and dehumanizing images. Its basic conclusions were: (1) viewers desire and are entitled to as much information as is reasonably possible about a film or video before they view it; and (2) censorship is an undesirable and ultimately ineffective way of achieving the valid and important aim of delegitimizing certain images and messages.

In the Report, the Commission recommends changes that will provide more information to viewers, and to parents or guardians of viewers, before a film or video is seen. Increased control over the kinds of videos children will be able to see is required. The Commission recommends that this be achieved by the institution of a sticker system, so that the classifications of videos will be visible on each video box and video cassette. In addition, the Commission recommends the enactment of legislative provisions that prohibit the rental, sale or loan of videos to children of an age restricted by the classification accorded to that film. Thus, the same supervision that exists in theatres will exist at video retail outlets. Further, only videos or clips from videos that have been “approved for all audiences” should be permitted to be shown on in-house screens on the premises of video retailers.

The Commission also recommends greater use of the “information pieces” or explanations that accompany the classifications and advertisements of films and videos. This will allow viewers to have more information about films and videos before they view them. Further, the information contained in Summary Reports completed by Board members, which specifies why films have received the classifications they have been accorded, should be made readily available to members of the public.

The Commission concludes in the Report that censorship is neither a desirable nor an effective method for the regulation of targeted materials. Changing technology makes it increasingly easy to avoid controls that attempt to ban images. The Commission does recommend that controls on advertising be instituted and strictly enforced.

The Commission has also recommended that the legislation be amended to permit the Ontario Board to adopt classifications given to films by any of the other provincial boards. The adoption of classifications given by other boards would be facilitated if the provinces would work together to develop one national set of classification categories. To the extent that the same classifications can be utilized across the country, there will be a corresponding improvement in the provision of information to consumers, and viewer confusion will be reduced.

This Report is confined to an analysis and evaluation of the powers of the Ontario Film Review Board; it is not a report on the regulation of pornography or other targeted materials. The Report canvasses various alternative existing or proposed methods for the regulation of violent, degrading, or dehumanizing material. The Commission has attempted, through its explanations and recommendations, to reduce some of the confusion that results from the overlap of provincial film boards and the federal criminal law. The federal criminal law governing obscenity operates in its own sphere and is not fundamentally affected by changes to the provincial Film Review Board. To the extent that the criminal law might

require reform in order for the systems to work together in a more effective manner, such recommendations lie beyond the scope of the Commission. On the other hand, the Commission would favour investigation into those methods that do not rely on prior restraint or criminalization but that attempt to increase media literacy and thus foster critical viewing, or that regulate by controlling the time, place, and manner of displays and advertising. The unacceptability of harmful messages should be conveyed by means other than forcible attempts to prevent the images from being portrayed.

Study Paper on Litigating the Relationship Between Equity and Equality

Employment and education equity programs are on current legislative and institutional agendas. Proactive initiatives are increasingly being considered to be essential to remedying the systemic and pervasive inequalities experienced by historically disadvantaged groups in society. Indeed, the *Canadian Charter of Rights and Freedoms* and human rights legislation across Canada include specific provisions endorsing special programs as consistent with the general purposes of equality guarantees. Moreover, in recently enacted pay equity legislation and the impending *Employment Equity Act*, Ontario has begun the process of implementing a new generation of human rights.

Despite widespread acknowledgment of the importance of proactive equity initiatives, there is growing debate about the scope, content, and fairness of special programs. Questions about the meaning and effects of special program provisions in the *Charter* and in human rights codes are increasingly being litigated. It is in this context that the Commission felt it timely and important to begin to explore these human rights issues.

This study paper, prepared for the Commission by Professor Colleen Sheppard of the Faculty of Law of McGill University, focuses on litigation relating to special programs. It canvasses the questions and concerns being raised about special programs in litigation, and discusses the interpretation of constitutional and legislative provisions that endorse equity initiatives. In so doing, the study paper is designed to provide guidance to adjudicators confronted with the questions raised by the practice of equity. It is also directed at legislators and policy makers faced with the need to develop more elaborate guidelines about the implementation of equity initiatives. As a background study paper, it does not include specific proposals for legislative reform. Rather, the paper attempts to provide a useful starting point for the formulation of public policy in this area.

The Commission is very grateful to Professor Sheppard for this excellent paper and for the stimulating and challenging discussions it has provoked within the precincts of the Commission. We publish the paper in the confident expectation that it will have a similar effect elsewhere.

B. PROJECTS IN PROCESS

Adjudication of Workplace Disputes

The purpose of this project is to consider whether, in structure and process, the adjudication of workplace disputes is taking place as effectively and expeditiously as possible. A Director's Report, prepared by Professor Bernard Adell, of the Faculty of Law, Queen's University, has been considered by the Commission.

In its project, the Commission will consider the interaction and potential for conflict or overlapping jurisdiction among the following tribunals or processes: the Labour Relations Board; grievance arbitration; *Employment Standards Act* referees; appeals conducted by the Director of Appeals under the *Occupational Health and Safety Act*; *Ontario Human Rights Code* boards of inquiry; the Pay Equity Commission; and the Employment Equity Commission.

In addition, the Commission's study will examine whether aspects of administrative law are in need of reform as they relate to workplace disputes adjudication.

The Law of Testing: Genetic and Psychological Testing

The Ontario Law Reform Commission has embarked on four studies of the law of testing. The Commission's *Report on Testing for AIDS* was released on March 12, 1992, and its *Report on Drug and Alcohol Testing in the Workplace* was released on September 9, 1992. The Commission continues to examine the areas of genetic and psychological testing in contexts such as the workplace, schools, and other institutional settings. These projects will consider when and how to balance an individual's right to privacy and the public's right to information.

Coroners' Inquests

Originally, the Commission initiated a project on public inquiries which included a review of inquiries under the *Public Inquiries Act* as well as inquests under the *Coroners Act*. Subsequently, however, it was decided to publish separate reports. Our *Report on Public Inquiries* was released on March 30, 1992, and work continues on the project on coroners' inquests. The project will examine the tension between pursuit of the public interest and, under certain circumstances, the protection of persons suspected of wrongdoing. The project Director is Professor Allan Manson, of the Faculty of Law, Queen's University.

Charities

Following a reference from the Attorney General, the Commission commenced a study of the law of charities in Ontario. The Project Director is Professor David Stevens, of the Faculty of Law, McGill University.

In this project, the Commission is examining the status, legal form, sources and uses of revenue, and supervision of charities. Among the specific issues canvassed are the following: (1) the type of activity that should benefit from the advantages accorded to charities; (2) whether organizations aimed at accomplishing political purposes should be considered charitable; (3) whether it is appropriate that charities be created by means of different legal forms (trusts, corporations, and unincorporated associations); (4) whether the investment powers of charities should be subject to restriction; (5) whether charities should be entitled to own for-profit organizations or to carry on business directly; (6) whether charitable fundraising activities should be controlled; and (7) who should be responsible for regulating charities, and by what means.

Basic Principles of Land Law

Three research papers, containing recommendations for reform of the basic principles of land law, have been prepared and considered by the Commission over the course of the project. Professor T.G. Youdan, of Osgoode Hall Law School, York University, was retained and has submitted a draft report to the Commission dealing with the basis of landholding in Ontario, successive estates and interests in land, qualified estates and interests in land, the Rule in Shelley's Case, co-ownership, and easements and profits.

GENERAL ACTIVITIES AND ACKNOWLEDGMENTS

Attached to this Report are six Appendices relating to the activities and staff of the Commission. Appendix A consists of a list of reports and other documents prepared and submitted by the Commission since its inception in 1964. Appendix B contains a table indicating the extent to which the Commission's recommendations have been enacted. Appendix C provides a non-exhaustive list of articles and cases in which the Commission's reports have been reviewed or cited. Appendix D contains a list of the members of the Ontario Law Reform Commission Advisory Board. Appendix E contains a list of the groups and organizations consulted by the Commission during the year. Finally, Appendix F includes a list of the officers and permanent staff of the Commission.

The past year has seen a number of significant changes in the staff of the Commission. Departing during the year were Larry M. Fox, Senior Counsel; Ronda F. Bessner, Counsel; Lisa Brownstone, Counsel; and Trina Richard, Receptionist. The Commission wishes to express its appreciation to each of these individuals for their dedication and their contribution to the work of the Commission. To those who have joined the Commission during the year, Sarah M. Boulby and Barbara J. Hendrickson, Counsel, we extend a sincere welcome. Our sincere thanks are extended to the administrative and secretarial staff for their support and assistance during the past year.

During the 1993-94 year, the Commission looks forward to the continuation of work on our projects in process, and to the further development of our research agenda in consultation with members of the bar, the judiciary, agencies of the government, academics, and other interested persons in the community.

APPENDIX A

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report
Report No. 1 [The Rule Against Perpetuities]	1965
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966
Report No. 2 [The Wages Act: Assignment of Wages]	1965
Report No. 3 on Personal Property Security Legislation	1965
Report No. 3A on Personal Property Security Legislation	1966
Report on The Evidence Act: Admissibility of Business Records	1966
Report on The Mechanics' Lien Act	1966
Supplementary Report on The Mechanics' Lien Act	1967
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966
Report on The Execution Act: Exemption of Goods from Seizure	1966
Report on the Law of Condominium	1967
Report on the Basis for Compensation on Expropriation	1967
Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	1968
Annual Report 1967	1968
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968
Report on The Protection of Privacy in Ontario	1968
Report on Section 183 of The Insurance Act	1968
Report on Trade Sale of New Houses	1968
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968

Title	Date of Report
Report on the Limitation of Actions	1969
Second Annual Report 1968	1969
Report on the Age of Majority and Related Matters	1969
Report on the Status of Adopted Children	1969
Report on Family Law, Part I: Torts	1969
Report on Section 20 the The Mortgages Act	1970
Report on Family Law, Part II: Marriage	1970
Third Annual Report 1969	1970
Report on Actions Against Representatives of Deceased Persons	1970
Report on the Coroner System in Ontario	1971
Report on Sunday Observance Legislation	1971
Report on Land Registration	1971
Fourth Annual Report 1970	1971
Report on The Change of Name Act	1971
Report on The Mortgages Act, Section 16	1971
Report on Development Control	1971
Report on Powers of Attorney	1972
Report on Occupiers' Liability	1972
Report on Consumer Warranties and Guarantees in the Sale of Goods	1972
Report on Review of Part IV of The Landlord and Tenant Act	1972
Fifth Annual Report 1971	1972
Report on the Non-Possessory Repairman's Lien	1972
Report on the Administration of Ontario Courts, Part I	1973
Sixth Annual Report 1972	1973
Report on the Administration of Ontario Courts, Part II	1973
Report on Family Law, Part III: Children	1973
Report on The Solicitors Act	1973
Report on Motor Vehicle Accident Compensation	1973
Report on the Administration of Ontario Courts, Part III	1973
Report on Family Law, Part IV: Family Property Law	1974

Title	Date of Report
Report on Family Law, Part V: Family Courts	1974
Seventh Annual Report 1973	1974
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974
Eighth Annual Report 1974	1975
Report on Family Law, Part VI: Support Obligations	1975
Report on Mortmain, Charitable Uses and Religious Institutions	1976
Report on Landlord and Tenant Law	1976
Report on the Law of Evidence	1976
Ninth Annual Report 1975	1976
Report on Changes of Name	1976
Report on the Impact of Divorce on Existing Wills	1977
Tenth Annual Report 1976	1977
Eleventh Annual Report 1977	1978
Report on Sale of Goods	1979
Twelfth Annual Report 1978	1979
Report on Products Liability	1979
Thirteenth Annual Report 1979	1980
Report on the Enforcement of Judgment Debts and Related Matters, Part I	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981
Fourteenth Annual Report 1980-81	1981
Report on Witnesses Before Legislative Committees	1981
Report on Class Actions	1982
Fifteenth Annual Report 1981-82	1982
Report on the Enforcement of Judgment Debts and Related Matters, Part IV	1983
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983
Report on Powers of Entry	1983
Sixteenth Annual Report 1982-83	1983
Report on the Law of Trusts	1983
Seventeenth Annual Report 1983-84	1984

Title	Date of Report
Report on Human Artificial Reproduction and Related Matters	1985
Twentieth Anniversary Report 1984-85	1985
Twenty-First Annual Report 1985-86	1986
Report on Political Activity, Public Comment and Disclosure by Crown Employees	1986
Report on Amendment of the Law of Contract	1987
Report on the Law of Mortgages	1987
Twenty-Second Annual Report	1987
Report on Compensation for Personal Injuries and Death	1987
Report on Contribution Among Wrongdoers and Contributory Negligence	1988
Report on Timesharing	1988
Twenty-Third Annual Report 1987-88	1988
Study Paper on Wrongful Interference with Goods	1989
Report on the Law of Standing	1989
Report on Covenants Affecting Freehold Land	1989
Report on Liability of the Crown	1989
Report on Damages for Environmental Harm	1990
Report on the Basis of Liability for Provincial Offences	1990
Report on Administration of Estates of Deceased Persons	1991
Report on Exemplary Damages	1991
1991 Ontario Law Reform Commission Report	1991
Appointing Judges: Philosophy, Politics and Practice	1991
Report on Child Witnesses	1991
Report on Testing for AIDS	1992
Report on Public Inquiries	1992
Summary of Recommendations	1992
Annual Report 1991-92	1992
Report on Drug and Alcohol Testing in the Workplace	1992
Report on the Powers of the Ontario Film Review Board	1992
Study Paper on Litigating the Relationship Between Equity and Equality	1993
Annual Report 1992-93	1993

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APPENDIX B

IMPLEMENTATION OF THE REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report No. 1 [The Rule Against Perpetuities]	1965	<i>The Perpetuities Act, 1966,</i> S.O. 1966, c. 113
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966	<i>do.</i>
Report No. 2 [The Wages Act: Assignment of Wages]	1965	<i>The Wages Amendment Act,</i> 1968, S.O. 1968, c. 142
Report No. 3 on Personal Property Security Legislation	1965	<i>The Personal Property Security Act, 1967, S.O.</i> 1967, c. 72
Report No. 3A on Personal Property Security Legislation	1966	<i>do.</i>
Report on The Evidence Act: Admissibility of Business Records	1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51,</i> s. 1
Report on The Mechanics' Lien Act	1966	<i>The Mechanics' Lien Act,</i> 1968-69, S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	1967	<i>do.</i>
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966	See <i>The Mechanics' Lien Amendment Act, 1975,</i> S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act,</i> 1975, S.O. 1975, c. 44

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>
Report on The Execution Act: Exemption of Goods from Seizure	1966	The Execution Amendment Act, 1967, S.O. 1967, c. 26
Report on the Law of Condominium	1967	<i>The Condominium Act, 1967, S.O. 1967, c. 13</i>
Report on the Basis for Compensation on Expropriation	1967	<i>The Expropriations Act, 1968-69, S.O. 1968-69, c. 36</i>
Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	1968	<i>The Sandwich Windsor and Amherstburg Railway Amendment Act, 1968, S.O. 1968, c. 120</i>
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968	<i>Divorce Act, S.C. 1967-68, c. 24, s. 26</i>
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i>
		See <i>The Registry Amendment Act, 1978, S.O. 1978, c. 8, s. 1</i>
Report on The Protection of Privacy in Ontario	1968	See <i>The Consumer Reporting Act, 1973, S.O. 1973, c. 97</i>
Report on Trade Sale of New Houses	1968	See <i>The Ontario New Home Warranties Plan Act, 1976, S.O. 1976, c. 52</i>
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968	<i>The Landlord and Tenant Amendment Act, 1968-69, S.O. 1968-69, c. 58</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Limitation of Actions	1969	See <i>The Highway Traffic Amendment Act (No. 2)</i> , 1975, S.O. 1975, c. 37 <i>The Fatal Accidents Amendment Act</i> , 1975, S.O. 1975, c. 38 <i>The Trustee Amendment Act</i> , 1975, S.O. 1975, c. 39
Report on the Age of Majority and Related Matters	1969	<i>The Age of Majority and Accountability Act</i> , 1971, S.O. 1971, c. 98
Report on the Status of Adopted Children	1969	<i>The Child Welfare Amendment Act</i> , 1970, S.O. 1970, c. 96, s. 23
Report on Family Law, Part I: Torts	1969	<i>The Family Law Reform Act</i> , 1978, S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	1970	<i>The Mortgages Amendment Act</i> , 1970, S.O. 1970, c. 54, s. 1
Report on Family Law, Part II: Marriage	1970	<i>The Civil Rights Statute Law Amendment Act</i> , 1971, S.O. 1971, c. 50, s. 55 (partial implementation) <i>The Marriage Act</i> , 1977, S.O. 1977, c. 42
Report on Actions Against Representatives of Deceased Persons	1970	<i>The Trustee Amendment Act</i> , 1971, S.O. 1971, c. 32, s. 2
Report on the Coroner System in Ontario	1971	<i>The Coroners Act</i> , 1972, S.O. 1972, c. 98
Report on Sunday Observance Legislation	1971	<i>The Retail Business Holidays Act</i> , 1975, S.O. 1975 (2nd Session), c. 9

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 134</i>
Report on Land Registration	1971	See <i>The Corporations Tax Amendment Act (No. 2), 1979, S.O. 1979, c. 89</i> <i>Land Registration Reform Act, 1984, S.O. 1984, c. 32</i>
Report on The Change of Name Act	1971	<i>The Change of Name Amendment Act, 1972, S.O. 1972, c. 44</i> <i>Change of Name Act, 1986, S.O. 1986, c. 7</i>
Report on Development Control	1971	<i>The Planning Amendment Act, 1973, S.O. 1973, c. 168, s. 10</i>
Report on Powers of Attorney	1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i> <i>Powers of Attorney Amendment Act, 1983, S.O. 1983, c. 74</i> <i>Mental Health Amendment Act, 1983, c. 75</i>
Report on Occupiers' Liability	1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
Report on Review of Part IV of The Landlord and Tenant Act	1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
Report on the Non-Possessory Repairman's Lien	1972	<i>Repair and Storage Liens Act, 1989, S.O. 1989, c. 17 (partial implementation)</i>
Report on the Administration of Ontario Courts, Part I	1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on the Administration of Ontario Courts, Part II	1973	<i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i>
		<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, ss. 19 and 25</i>
		<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 162</i> See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
Report on Family Law, Part III: Children	1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i>
		<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i>
		<i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i>
		See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i>
Report on The Solicitors Act	1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 214(6)</i>
Report on the Administration of Ontario Courts, Part III	1973	<i>The Judicature Amendment Act, 1975, S.O. 1975, c. 30 (partial implementation)</i>
		See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
		<i>The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52 (partial implementation)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Family Law, Part IV: Family Property Law	1974	<p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i></p> <p><i>The Family Law Reform Act, 1978, S.O. 1978, c. 2 (partial implementation)</i></p> <p><i>Family Law Act, 1986, S.O. 1986, c. 4 (partial implementation)</i></p> <p>See <i>The Land Titles Amendment Act, 1978, S.O. 1978, c. 7</i></p> <p><i>The Registry Amendment Act, 1978, S.O. 1978, c. 8</i></p>
Report on Family Law, Part V: Family Courts	1974	<p>See <i>The Unified Family Court Act, 1976, S.O. 1976, c. 85</i></p> <p><i>The Children's Probation Act, 1978, S.O. 1978, c. 41 (partial implementation)</i></p>
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974	<p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 42</i></p>
Report on Family Law, Part VI: Support Obligations	1975	<p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i></p> <p><i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i></p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Mortmain, Charitable Uses and Religious Institutions	1976	<p><i>The Religious Organizations' Lands Act, 1979, S.O. 1979, c. 45</i></p> <p><i>The Anglican Church of Canada Act, 1979, S.O. 1979, c. 46</i></p> <p><i>The Registry Amendment Act, 1979, S.O. 1979, c. 94, s. 17</i></p> <p><i>Charities Accounting Amendment Act, 1982, S.O. 1982, c. 11</i></p> <p><i>Mortmain and Charitable Uses Repeal Act, 1982, S.O. 1982, c. 12, s. 1(1)</i></p>
Report on Landlord and Tenant Law	1976	<p><i>The Residential Tenancies Act, 1979, S.O. 1979, c. 78 (partial implementation)</i></p>
Report on Changes of Name	1976	<p><i>The Change of Name Amendment Act, 1978, S.O. 1978, c. 28</i></p> <p><i>The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)</i></p> <p><i>Change of Name Act, 1986, S.O. 1986, c. 7 (partial implementation)</i></p> <p><i>Vital Statistics Amendment Act, 1986, S.O. 1986, c. 9 (partial implementation)</i></p>
Report on the Impact of Divorce on Existing Wills	1977	<p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i></p>
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981	<p><i>Wages Amendment Act, 1983, S.O. 1983, c. 68 (partial implementation)</i></p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>Proceedings Against the Crown Amendment Act, 1983</i> , S.O. 1983, c. 88
		<i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 177 (partial implementation)
		Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981	Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)
Report on Class Actions	1982	<i>Class Proceedings Act, 1992</i> , S.O. 1992, c. 6 (partial implementation)
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983	<i>Creditors' Relief Amendment Act, 1985</i> , S.O. 1985, c. 1 (partial implementation)
Report on Compensation for Personal Injuries and Death	1987	<i>Courts of Justice Amendment Act, 1989</i> , S.O. 1989, c. 67 (partial implementation)

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APPENDIX C

JUDICIAL AND ACADEMIC REFERENCES TO REPORTS OF THE ONTARIO LAW REFORM COMMISSION*

Report No. 1 [The Rule Against Perpetuities] (1965)

Sutherland Estate v. Dyer (1991), 4 O.R. (3d) 168, 82 D.L.R. (4th) 432
Re Tilbury West Public School Board and Hastie, [1966] 2 O.R. 20

Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]

Sutherland Estate v. Dyer (1991), 4 O.R. (3d) 168, 82 D.L.R. (4th) 432

Report No. 3 on Personal Property Security Legislation (1965)

Harvey Hubbell Canada Inc. v. Thornhurst Corp. (1989), 69 O.R. (2d) 53
Bank of Nova Scotia v. McIvor (1986), 57 O.R. (2d) 501

Report on The Mechanics' Lien Act (1966)

National Defence Credit Union Ltd. v. Labine, [1987] O.J. No. 1366
George Wimpey Canada Ltd. v. Peelton Hills Ltd. (1982), 35 O.R. (2d)
787, 132 D.L.R. (3d) 732
Otis Elevator Co. Ltd. v. Commonwealth Holiday Inns of Canada Ltd.
(1975), 8 O.R. (2d) 297, 57 D.L.R. (3d) 681

Supplementary Report on The Mechanics' Lien Act (1967)

George Wimpey Canada Ltd. v. Peelton Hills Ltd. (1982), 35 O.R. (2d)
787, 132 D.L.R. (3d) 732

* This is a non-exhaustive list of articles and cases in which the Commission's reports have been reviewed or cited.

Report on The Law of Condominium (1967)

- McKay v. Waterloo North Condominium Corp. No. 23* (1992), 11 O.R. (3d) 341
Re 511666 Ontario Ltd. and Confederation Life Insurance Co. (1985), 50 O.R. (2d) 181
Frontenac Condominium Corp. No. 1 v. Joe Macciocchi & Sons Ltd. (1974), 3 O.R. (2d) 331, 45 D.L.R. (3d) 347
Re Lambert Island Ltd. and Attorney-General of Ontario, [1972] 2 O.R. 659, 26 D.L.R. (3d) 391

Report on the Basis for Compensation on Expropriation (1967)

- Re City of Windsor and Larsen* (1980), 29 O.R. (2d) 669, 114 D.L.R. (3d) 477
Re Laidlaw and Municipality of Metropolitan Toronto, [1978] 2 S.C.R. 736, 87 D.L.R. (3d) 161

Report on the Proposed Adoption in Ontario of The Uniform Wills Act (1968)

- Re Nicholls* (1987), 57 O.R. (2d) 763, 34 D.L.R. (4th) 321

Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies (1968)

- Re Boyd and Earl & Jennie Lohn Ltd.* (1984), 47 O.R. (2d) 111, 11 D.L.R. (4th) 265
Reference re Residential Tenancies Act (1980), 26 O.R. (2d) 609, 105 D.L.R. (3d) 193
Gaul v. King (1979), 33 N.S.R. (2d) 60

Report on Limitation of Actions (1969)

- McEvoy, Case Comment on *Clark v. Naqvi* (1989), 99 N.B.R. (2d) 271, 250 A.P.R. 271, (1990), 104 N.B.R. (2d), 261 A.P.R. 237
Guignard v. Paulin, [1992] N.B.J. No. 23
Swiderski v. Broy Engineering Ltd., [1992] O.J. No. 2406
Grundy v. Humber College of Applied Arts and Technology, [1992] O.J. No. 2577

Murphy v. Welsh (1991), 3 O.R. (3d) 182, 81 D.L.R. (4th) 475
Ontario Teachers' Pension Plan Board v. York University (1990), 74 O.R. (2d) 714, 72 D.L.R. (4th) 253
Lee v. Ontario (Minister of Transportation & Communications) (1990), 72 O.R. (2d) 343
Comite d'environnement de La Baie Inc. v. Societe d'electrolyse et de chimie Alcan Ltee. (1990), 29 Q.A.C. 251
Hart v. Hart (1990), 27 R.F.L. (3d) 419
West End Construction Ltd. v. Ontario Human Rights Commission (1989), 62 D.L.R. (4th) 329, 70 O.R. (2d) 133
Alberta v. Buys (1989), 59 D.L.R. (4th) 677
Cementation Co. (Canada) v. American Home Assurance Co. (1989), 37 B.C.L.R. (2d) 172
Colangelo v. Mississauga (City) (1988), 66 O.R. (2d) 29
Radelja v. Canadian General Insurance Co. (1988), 29 C.C.L.I. 168
Bank of Nova Scotia v. Dunphy Leasing Enterprises Ltd. (1987), 38 D.L.R. (4th) 575
Streng v. Township of Winchester (1986), 56 O.R. (2d) 649, 31 D.L.R. (4th) 734
Re West End Construction Ltd. and Ministry of Labour for Ontario (1986), 57 O.R. (2d) 391, 33 D.L.R. (4th) 285
C.C. Fraser Building Supplies Ltd. v. Ontario Hydro (1986), 55 O.R. (2d) 32, 28 D.L.R. (4th) 557
Re Walker and Bostwick (1986), 34 D.L.R. (4th) 310
Public Trustee v. Mortimer (1985), 49 O.R. (2d) 741
Morley v. Wiggins (1985), 49 O.R. (2d) 136, 7 O.A.C. 324
Moffett v. Farnsworth (1984), 47 O.R. (2d) 620, 12 D.L.R. (4th) 101
Ranjoy Sales and Leasing Ltd. v. Deloitte, Haskins & Sells (1984), 31 Man. R. (2d) 87, [1985] 2 W.W.R. 534
Schenck v. The Queen in right of Ontario; Rokeby v. The Queen in right of Ontario (1983), 40 O.R. (2d) 410, 142 D.L.R. (3d) 261
Sydney Steel Corporation v. Al E. & C. Limited and Dresser Canada Inc. (1983), 58 N.S.R. (2d) 369, 123 A.P.R. 369
Central Trust Company v. Rafuse and Cordon (1983), 57 N.S.R. (2d) 125, 147 D.L.R. (3d) 360
Morgan v. Superintendent of Winnipeg Remand Centre, [1983] 3 W.W.R. 542
Duffin v. Mehagan; Lipton v. Mehagan (1982), 35 O.R. (2d) 563
Re Palermo Bakery Ltd. and Dominion of Canada General Insurance Co. (1976), 12 O.R. (2d) 50
Attorney-General for Ontario v. Watkins (1975), 8 O.R. (2d) 513, 58 D.L.R. (3d) 260

Report on the Age of Majority and Related Matters (1969)

Eccles v. Van Duin (1978), 19 O.R. (2d) 37, 84 D.L.R. (3d) 406
Clark v. Clark, [1971] 1 O.R. 674, 16 D.L.R. (3d) 376
Wood v. Wood, [1971] 1 O.R. 731, 16 D.L.R. (3d) 497

Report on Family Law, Part I: Torts (1969)

Szarfer v. Chodos (1988), 66 O.R. (2d) 350
Frame v. Smith, [1987] 2 S.C.R. 99, 42 D.L.R. (4th) 81
Szarfer v. Chodos (1986), 54 O.R. (2d) 663, 27 D.L.R. (4th) 338
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APPENDIX D

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APPENDIX E

GROUPS AND ORGANIZATIONS CONSULTED BY THE ONTARIO LAW REFORM COMMISSION

In its projects, the Ontario Law Reform Commission consults regularly with members of the Bench, the Bar, the academic community, provincial and federal government ministries and agencies, and various persons, organizations and governmental institutions in other jurisdictions. In addition to the foregoing, during 1992-93 the Commission consulted with a wide range of groups and organizations, including the following:

Advocacy Resource Centre for the Handicapped (“ARCH”)
Alliance for Life (Ontario) Inc.
Canadian Bar Association—Ontario
Canadian Civil Liberties Association
Canadian Film Makers Distribution Centre
Canadians Concerned About Violence in Entertainment
Cinephile
Deputy Chief Coroner of Quebec
Early Pre-Implantation Cell Screening Programme, University of Western Ontario
Educational Testing Services
Information and Privacy Commissioner/Ontario
Metro Action Committee on Public Violence Against Women and Children (“METRAC”)
Municipal Action Committee on Violence Against Women
National Watch on Images of Women in the Media Inc. (“MediaWatch”)
Office of the Director of Employment Standards
Office of the Director of Labour Standards
Office of the Occupational Health and Safety Adjudicator
Ontario Coalition Against Film and Video Censorship
Ontario Film Development Corporation
Ontario Film Review Board
Ontario Human Rights Commission
Ontario Labour Relations Board

Ontario Women's Directorate

Pay Equity Commission

Project P (a joint force of the Ontario Provincial Police and the Metropolitan Toronto Police)

REAL Women of Canada

Rent a Reel Video Inc.

Right to Life Association of Toronto and Area

Toronto Women in Film and Television

Windsor Women's Incentive Centre

APPENDIX F

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ONTARIO LAW REFORM COMMISSION



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ONTARIO LAW REFORM COMMISSION



Ontario

The Ontario Law Reform Commission was established by the Ontario Government in 1964 as an independent legal research institute. It was the first Law Reform Commission to be created in the Commonwealth. It recommends reform in statute law, common law, jurisprudence, judicial and quasi-judicial procedures, and in issues dealing with the administration of justice in Ontario.

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**Ontario
Law Reform
Commission**

To The Honourable Marion Boyd
Attorney General for Ontario

Dear Attorney:

We have the honour to present the 1993-94 Annual Report of the Ontario Law Reform Commission, for the period ending March 31, 1994, in accordance with section 2(3) of the *Ontario Law Reform Commission Act*, R.S.O. 1990.

John D. McCamus
Chair

Richard E. B. Simeon
Vice Chair

Nathalie Des Rosiers
Commissioner

Sandra Rodgers
Commissioner

Vibert Lampkin
Commissioner

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INTRODUCTION

During the period covered by this Annual Report—April 1, 1993 to March 31, 1994—the Commission accomplished a number of objectives. The Commission, its staff and consultants continued to make substantial progress on a number of continuing projects, which are described more fully in the following pages. At the same time, however, the Commission undertook four new projects and produced reports or draft reports on them within the reporting period. Readers familiar with the nature of typical law reform projects will understand that it is quite unusual for such projects to be conceived of and completed within so short a time frame. The Commission's success in this regard during the past year could be accomplished only by a highly intense period of work by the Commission's staff and counsel and its consultants. Finally, the Commission made significant progress in the area of program development by articulating criteria for project selection and, towards the end of the reporting period, by beginning a systematic consultation exercise aimed at adding new items to our agenda of law reform projects.

At the beginning of the reporting period, the Commission signalled to the Ministry its interest in developing a series of projects on various aspects of family law. Shortly after the Commission was established in 1964, the Commission commenced a major project on family law. From 1969 to 1975, the Commission published six reports on various aspects of family law. Those pioneering volumes formed the basis for the family law reforms enacted by the province in 1978 and 1986. The current Commissioners determined that further studies of family law might now be appropriate. Sufficient time has passed to make it possible to identify unanticipated problems resulting from the new legislation. An attempt could be made to determine whether the initial objectives of the statutory reforms had accomplished the objectives motivating the reform, either in whole or in part. Recent research could be taken into account and consideration could be given to the need, if any, to respond to continuing social change with further reform.

It soon became apparent that there were at least three areas in which further study appeared not merely desirable, but a matter of some urgency. First, problems that have come to light in the interpretation and application of Part I of the *Family Law Act*, which provides for the division of family property upon the separation of spouses, need to be addressed. Second, the desirability of extending the coverage of various features of the scheme set out in the provincial family law legislation to two types of relationship that

are currently partially or wholly excluded from such coverage—cohabiting heterosexual couples and cohabiting couples of the same sex—appeared worthy of study. Third, the division of pension assets upon the dissolution of a relationship between a member of a pension plan and his or her spouse appeared to be generating much expensive conflict and litigation for separating spouses. Accordingly, the Commission undertook projects on these three topics. We were encouraged to undertake this work by the Attorney General, who indicated, as well, that it would be particularly helpful to the Ministry to have the benefit of early advice in each of these three areas.

To accomplish the latter objective, it became necessary for the Commission to put aside, for the time being, its work on other projects and to focus the energy of our staff and a newly retained group of consultants on these three projects. The Commission was able to make available draft reports on these subjects before the end of the summer of 1993. Final reports—entitled *Report on the Rights and Responsibilities of Cohabitants Under the Family Law Act* and *Report on Family Property Law*—were released by the Commission in November of that year. Further work and consultation on the draft report on pension division continued throughout the reporting period. The Commission is extremely grateful to those involved for the impressive, and at times, herculean efforts that enabled us to meet those objectives.

Two other ongoing Commission projects have arisen from expressions of interest from the Ministry. At the beginning of 1994, the Ministry transmitted to the Commission a request that had been made by the Ontario Courts Management Advisory Committee to undertake a study of the use of jury trials in civil cases. The Committee, having been advised that the frequency of jury trials in civil cases within the province is, in the Canadian context, unusually high, suggested that we examine the use made of juries in civil cases in Ontario with a view to considering possible reform of the rules concerning their availability.

Although the Commission had previously addressed this question in its *Report on Administration of Ontario Courts* (1973), it was felt that the subject should be considered afresh in the light of more recent information concerning practice in Ontario and the evolving experience in other jurisdictions. With a view to stimulating discussion of this question within the various branches of the profession, the Commission issued a consultation paper on this subject in March of this year. A final Commission report on this topic will be informed by the responses received to the consultation paper and further research undertaken by the Commission.

A further project referred to the Commission by the Minister in March of 1994 relates to the recovery of indirect profits of criminal wrongdoing.

The term “indirect profits” refers to benefits, such as royalties from books recounting criminal exploits, secured by individuals who have committed crimes. In referring the matter to the Commission, the Attorney General indicated that attention should be paid to the criminal law and procedure, the permissible limits of the criminal process, civil concepts of unjust enrichment, civil procedure and civil enforcement mechanisms, administrative law, the division of powers and freedom of expression and fundamental justice issues under the *Canadian Charter of Rights and Freedoms*.

Although a substantial proportion of the Commission’s resources were devoted to the recent initiatives outlined above, the Commission continued to make significant progress on a number of other ongoing projects. These include: psychological and genetic testing; charities; coroners’ inquests; basic principles of land law; and adjudication of workplace disputes. Brief descriptions of these projects are set out in the pages that follow.

Finally, the Commission decided to undertake a project on the difficult issues relating to the withholding and withdrawal of life-preserving medical treatment. Fortunately, the Commission was able to retain Professor Joan Gilmour of Osgoode Hall Law School, an expert in this field, to direct the project.

Useful progress in the development of our program also occurred during the reporting period. Early in the year, the Commission engaged in discussions designed to develop a more systematic approach to the question of program design. In June of 1993, the Commission adopted a set of criteria for program selection. The criteria identified by the Commission are as follows:

1. A demonstrated need for reform.
2. Likelihood that the Commission’s proposals will engage the needs and concerns of groups who would not otherwise have the resources or degree of organization to make their voices effectively heard.
3. Availability of personnel and financial resources within the Commission.
4. The nature of the subject is such that is it not likely to be subject of study by other government agencies for reasons such as the following:

- the controversial nature of the subject.
 - the importance of the subject lies in the medium to longer term future.
 - the subject is one with respect to which the government itself suffers a conflict of interest.
 - the subject is one which is not likely to attract political attention, but is nonetheless in an area in which modernization or clarification of the law can have very important long term benefits for the public.
5. Likelihood of completion in a reasonable period of time.
 6. Consistency with any Commission statement of current priorities.
 7. Potential for collaborating with other law reform bodies, government ministries, or non-governmental research groups.
 8. The absence of reports by law reform bodies or other agencies which render further study unnecessary.
 9. Likelihood of implementation of proposals for reform.

These criteria for project selection reflect many of the observations about the role of and rationale for the Commission contained in the Commission's Annual Report 1992-93.

Throughout the reporting period, the Commission continued its discussions with individuals and groups interested in possible project areas. Toward the end of the reporting period, the Commission organized three roundtable meetings to discuss possible projects. Each of the meetings was organized around a particular theme. Participants in the meetings included members of the profession, the judiciary and others who possess expertise relating to the three theme areas of commercial law, law and poverty and family law. It is anticipated that a number of new projects will be developed in the next several months as a result of these and other discussions.

The Commission was delighted to welcome a new Commissioner. On June 24, 1993, the appointment of the Honourable Vibert A. Lampkin as a member of the Commission was announced. Judge Lampkin, who obtained his LL.B. degree at the University of Toronto and his LL.M. degree at Osgoode Hall Law School, brings to the Commission the perspective and

insights developed during a distinguished career both in the general practice of law and as a member of the judiciary. The Commission is fortunate to have the benefit of Judge Lampkin's participation and guidance in its deliberations.

THE PROJECTS

A. COMPLETED PROJECTS

1. *Report on Family Property Law*

This report is one of three in which the Commission addresses a number of pressing issues in family law. The Commission considers the legitimacy of the current definition of spouse in the *Family Law Act* in its *Report on the Rights and Responsibilities of Cohabitants Under the Family Law Act* (1993), as well as complex problems that have arisen in the sharing of pensions under the equalization scheme in the *Report on Pensions as Family Property: Valuation and Division* (forthcoming).

In its *Report on Family Property Law*, the Commission recommends amendments to the legislative scheme for the equalization of the value of family property between spouses. The Commission first examined the law regarding the sharing of property between spouses in Part IV of the *Report on Family Law: Family Property Law* (1974). Its recommendations for the equalization of family property between spouses were enacted in Part I of the *Family Law Act*, 1986. In the seven years since the passage of this legislation, difficulties experienced by spouses and counsel with the operation of the statute have indicated the need for further reforms.

In its new Report, the Commission suggests changes to improve the efficiency and fairness of the equalization scheme. Since the Commission issued its first report on family property common law remedies available to spouses have evolved. Today, spouses have access to both the rights and remedies provided in the *Family Law Act* and those available at common law. In this Report, the Commission also examines the common law remedies and their continued relevance in light of a reformed statutory scheme.

The Commission makes a number of recommendations designed to ensure that the fundamental object of the legislation, the sharing of wealth generated during a relationship, is achieved. To this end, the Commission recommends that:

- the current Ontario legislation should be modified to allow for the sharing of a substantial fluctuation in the value of an asset between the statutory valuation date and the trial if necessary to ensure an equitable result, having regard to the cause of the fluctuation;

- spouses should share any change in value of an asset that a spouse acquires independently from the relationship during the relationship, such as a gift or an inheritance; and
- the law should be amended to ensure that the family home [“matrimonial home”] is treated like other assets for the purposes of equalization.

While the Commission strongly supports the principle that spouses should always share any change in the value of a family home during a relationship and reaffirms spousal rights to possession of the home and restrictions on the ability of a spouse to encumber or dispose of the home, it believes that the current practice of preventing a spouse from deducting the value of a home owned at the date of marriage, or acquired independently of the marriage, is unfair.

The Commission recommends the introduction of new measures to discourage avoidance of the Act. The Commission proposes a “claw back” of the value of an asset disposed of by a spouse with the intent of avoiding the legislative sharing of the value of family property. If that spouse has insufficient assets to satisfy an equalization payment calculated on the basis of a “claw back”, the Commission recommends that the other spouse have the right to apply to have the transaction reversed. To succeed in such an application, the spouse would have to demonstrate that both the spouse-transferor and the transferee intended to defeat a claim a spouse may have under the Act by the transaction. If the impugned transaction occurred within three months of the same spouse initiating a separation, the Commission recommends that the statute should create a presumption that the spouse had the requisite intent. No such presumption should extend to the intent of the transferee.

The Commission also recommends changes in the statutory provisions respecting equalization upon the death of a spouse. The Commission recommends that a spouse’s property should be valued immediately after death and that the value of any insurance benefits should be included in the property of the survivor. Surviving spouses should be given additional time to make decisions about whether to elect statutory equalization and retain possession of the family home after death. The Commission makes proposals to increase the flexibility of the statutory provisions, including amending the Act to allow a spouse to revoke an election at any time with leave of a judge and to confirm that a substitute decision-maker may make an election for an incapacitated surviving spouse.

The Report examines the interaction of statutory and common law remedies for the sharing of family property between spouses. Spouses have

sought declarations of remedial constructive trust to compensate for problems in the operation of the statute, as currently drafted. For example, many spouses make such applications to share in post-valuation date fluctuations in value. If the Commission's recommendations to remedy problems with the operation of the existing equalization provisions are acted on, the need for the common law remedy will diminish correspondingly. The Commission considers the disadvantages of the common law remedy. The remedial constructive trust suffers from uncertainty of application of the doctrine and creates evidentiary difficulties that add significantly to litigation costs. The Commission concludes that spouses who receive the benefit of statutory equalization of family property should be denied the right to seek declarations of trust as restitution for a contribution to the acquisition, preservation, or enhancement of property held by the other spouse.

2. Report on the Rights and Responsibilities of Cohabitants Under the Family Law Act

In its *Report on the Rights and Responsibilities of Cohabitants Under the Family Law Act*, the Commission addresses the question of who should be entitled to the rights, and subject to the obligations, set out in the *Family Law Act*. Specifically, the Commission addresses the kinds of relationship that should invoke the provisions of the Act, which deal with such matters as the equal sharing of the value of property accumulated during a relationship at the time of its breakdown, possession of the family home, support obligations, domestic contracts, and the assertion of claims for damages in the event of the death of, or injury to, a family member. Currently, unmarried heterosexual cohabitants are recognized in only some of the Act's provisions, namely those concerning support obligations, domestic contracts, and dependants' claims for damages. Same-sex cohabitants are not subject to any of the provisions of the Act. The Report considers potential constitutional challenges to the current legislative scheme, as well as relevant policy issues.

The Commission concludes that the *Family Law Act* should be amended to include two types of relationship that, at present, are partly or wholly excluded, that is, those between cohabiting but unmarried heterosexual couples, and those between cohabiting couples of the same sex. The Commission recommends that unmarried heterosexual couples who have lived together for a defined period of time, or who are parenting a child, be given the same rights and responsibilities as married persons throughout the *Family Law Act*.

The Commission also recommends that a system of Registered Domestic Partnerships be established that would permit any two individuals, including same-sex couples, to become Registered Domestic Partners and that the *Family Law Act* should be amended to extend to these individuals the same rights and obligations available to married persons throughout the Act. Registered Domestic Partnerships would be created upon the filing by two persons of a witnessed and signed registration form. Registration should be permitted for any two individuals who are neither married nor the Registered Domestic Partner of another, and who are at least eighteen years of age. If one or both of the persons entering the partnership fails to comply with these requirements, the Registered Domestic Partnership should be void. The Commission further recommends that a Registered Domestic Partner should be entitled to revoke the partnership unilaterally, upon giving notice to the other partner.

The Commission recommends that the *Family Law Act* should be amended to provide that same-sex couples have the same right to enter into cohabitation and separation agreements currently enjoyed by unmarried heterosexual couples. The Commission, however, recommends that the Legislature should acquire further information concerning attitudes and expectations within the gay and lesbian community before imposing rights and responsibilities under the *Family Law Act* on same-sex couples who do not exercise the right to become Registered Domestic Partners.

In addition, the Commission makes a series of recommendations for consequential amendments to the *Family Law Act* necessitated by the proposed expansion of its application.

3. *Consultation Paper on the Use of Jury Trials in Civil Cases*

The *Consultation Paper on the Use of Jury Trials in Civil Cases* was intended to initiate public discussion of the relative merits of the civil jury. By presenting tentative recommendations, the Commission hoped to stimulate a debate about the value of the jury in civil matters. The insights gained from this debate will assist the Commission in reaching its final recommendations, which will be contained in the Commission's forthcoming *Report on the Use of Jury Trials in Civil Cases*.

The Consultation Paper summarizes arguments for and against the retention of the jury for the adjudication of civil matters. Among the arguments presented in favour of retaining the jury for most civil matters are: civil juries act as a safeguard against judicial bias and impropriety; juries allow for direct public involvement in the administration of civil justice and

in the setting of community standards; juries have been proven to be competent factfinders; and jury service is an important means of educating the public about our legal system. Among the arguments against the retention of the civil jury are: jury trials take longer and are more expensive than trials by judge alone; jury notices are primarily tactical devices; and juries are not competent factfinders.

After evaluating the competing arguments the paper reaches the tentative conclusion that civil jury trials should be retained in Ontario only for cases for which it would be useful to have representatives of the community participate in resolving the dispute because community values, attitudes or priorities are the predominant issues in the case. If implemented, this would reverse the existing presumption that juries are available for most civil trials and would require a litigant to show that the predominant issues in an action concern the values, attitudes or priorities of the community in order to be granted the right to a jury. The Commission is grateful to Paul M. Perrell of the law firm Weir & Foulds, for his assistance in preparing the Consultation Paper.

B. PROJECTS IN PROCESS

1. *Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes*

The purpose of this project is to consider whether the adjudication of workplace disputes is taking place as effectively and expeditiously as possible. A Director's Report, prepared by Professor Bernard Adell, of the Faculty of Law, Queen's University, has been considered by the Commission.

In this project, the Commission considers the interaction and potential for conflict or overlapping jurisdiction among the following tribunals or processes: the Labour Relations Board; grievance arbitration; *Employment Standards Act* referees; appeals conducted by the Director of Appeals under the *Occupational Health and Safety Act*; *Ontario Human Rights Code* boards of inquiry; the Pay Equity Commission; and the Employment Equity Commission.

In addition, the Commission's study will examine whether aspects of administrative law are in need of reform as they relate to workplace disputes adjudication.

2. *The Law of Testing: Genetic and Psychological Testing*

The Ontario Law Reform Commission has embarked on four studies of the law of testing. The Commission's *Report on Testing for AIDS* was released on March 12, 1992, and its *Report on Drug and Alcohol Testing in the Workplace* was released on September 9, 1992. The Commission continues to examine the areas of genetic and psychological testing in contexts such as the workplace, schools, and other institutional settings. These projects will consider when and how to balance an individual's right to privacy and the public's right to information.

3. *Coroners' Inquests*

Originally, the Commission initiated a project on public inquiries that included a review of inquiries under the *Public Inquiries Act* as well as inquests under the *Coroners Act*. Subsequently, however, it was decided to publish separate reports. The *Report on Public Inquiries* was released in March of 1992, and work continues on the project on coroners' inquests. The project will examine the tension between pursuit of the public interest and, under certain circumstances, the protection of persons suspected of wrongdoing. The project Director is Professor Allan Manson, of the Faculty of Law, Queen's University.

4. *Charities*

Following a reference from the Attorney General, the Commission commenced a study of the law of charities in Ontario. The Project Director is Professor David Stevens, of the Faculty of Law, McGill University.

In this project, the Commission examines the status, legal form, sources and uses of revenue, and supervision of charities. Among the specific issues canvassed are the following: (1) the type of activity that should benefit from the advantages accorded to charities; (2) whether organizations aimed at accomplishing political purposes should be considered charitable; (3) whether it is appropriate that charities be created by means of different legal forms (trusts, corporations, and unincorporated associations); (4) whether the investment powers of charities should be subject to restriction; (5) whether charities should be entitled to own for-profit organizations or to carry on business directly; (6) whether charitable fundraising activities should be controlled; and (7) who should be responsible for regulating charities, and by what means.

5. *Basic Principles of Land Law*

Three research papers, containing recommendations for reform of the basic principles of land law, have been prepared and considered by the Commission over the course of the project. T.G. Youdan, then a professor at Osgoode Hall Law School, York University, now of the law firm of Davies, Ward & Beck, was retained and has submitted a draft report to the Commission, which aims to simplify some of the complexities of land law in Ontario such as: successive estates and interests in land; qualified estates and interests in land; the Rule in *Shelley's Case*; co-ownership; and easements and profits.

6. *Euthanasia*

In *Rodriguez v. B.C. (A.G.)*, the Supreme Court of Canada affirmed the *Criminal Code* prohibition against assisting suicide, concluding that it did not breach the *Canadian Charter of Rights and Freedoms*. The decision brought to the fore concerns about the state of the law relating not only to that issue (active euthanasia), but also with respect to decision-making about withholding and withdrawing life-preserving treatment more generally. This project will involve a review and analysis of the current law and the vast biomedical ethical literature in this area, as well as a comparative overview of the law in other jurisdictions. Enforcement policies and standards of professional conduct in Ontario and other provinces will also be considered. The goal is to make recommendations for the clarification and reform of provincial law.

Given the strong opinions generated by this topic, this project necessarily requires an extensive consultation process. The Commission will seek to maximize the involvement of both the professional and lay communities.

7. *The Use of Jury Trials in Civil Cases*

The report on the use of jury trials in civil cases will build on the insights obtained from the consultation process surrounding the Commission's *Consultation Paper on the Use of Jury Trials in Civil Cases*. It will present empirical data to assess whether jury trials do in fact take longer and are more expensive than trials by judge alone. In addition, the Report will describe other research undertaken in response to comments arising out of the consultation process. The Commission will conclude the Report with its final recommendations concerning the use of jury trials in civil cases.

8. *Pensions as Family Property: Valuation and Division*

Since 1986, pensions have been included as family property, and therefore subject to the equalization process set out in Part I of the *Family Law Act*. The division and valuation of pensions in Ontario has been a problematic process. Currently, the law gives little guidance with respect to the appropriate methods of valuing pension benefits. In addition, the provisions of the *Pension Benefits Act*, enacted in 1988 to provide a scheme for the division of pensions at source, have produced their own problems. As a result, Ontario has a complicated and unsatisfactory pension division process. Although reforms have been recommended in the past, no legislative change has resulted. Given the importance of this area and the unsatisfactory nature of current Ontario law, the Commission has determined that the division of pensions should assume a prominent place on its agenda of family reform issues. In its final report, the Commission will make recommendations for reform of the law relating to the division of pensions upon marriage breakdown.

The Commission will deal with four areas of reform: (1) the status of plan administered “if and when” agreements and orders under section 51 of the *Pension Benefits Act*; (2) guidelines for the valuation of pensions for equalization purposes under the *Family Law Act*; (3) the creation of pension division at source as an additional settlement option under the *Family Law Act*; and (4) the division of Canada Pension Plan benefits under the *Family Law Act*.

9. *Indirect Profits from Crime*

In this project, the Commission examines the feasibility of enacting provincial legislation preventing or restricting individuals from making a profit, for example, by the publication of books, from circumstances surrounding the fact that they had been charged and convicted of a criminal offence. The Commission is examining whether such legislation should be enacted at all and, if so, whether it should be designed merely to prevent profits from being made by criminals, or whether it should also have the goal of compensating the victims of crime.

GENERAL ACTIVITIES AND ACKNOWLEDGMENTS

It is difficult, of course, to assess the impact of the Commission's work during a particular year or, indeed, over a longer period. Nonetheless, the Commission was gratified to note that the lengthy list of provincial legislation implementing Commission proposals was again added to in the past year. The *Public Service and Labour Relations Statute Law Amendment Act, 1993*, implements proposals set out in the Commission's 1986 *Report on Political Activity, Public Comment and Disclosure by Crown Employees*. A review of recent judicial decisions and periodical literature confirms that the Commission's reports continue to be considered by the courts and of assistance to the academic and law reform communities.

Attached to this report are six Appendices relating to the activities and staff of the Commission. Appendix A lists reports and other documents prepared and submitted by the Commission since its inception in 1964. Appendix B indicates the extent to which the Commission's recommendations have been enacted. Appendix C provides a non-exhaustive list of articles and cases that have come to our attention during the past year in which the Commission's reports have been reviewed or cited. Appendix D contains a list of the members of the Ontario Law Reform Commission Advisory Board. Appendix E contains a list of the groups and organizations consulted by the Commission during the year. Finally, Appendix F lists the officers and permanent staff of the Commission.

The past year has seen a number of significant changes in the composition of the Commission's staff. Departing during the year were Sarah M. Boulby, Counsel; Annetta Charles, Administrative Assistant; Mary M. O'Hara, Secretary to the Chief Administrator and Sharon Hattori, Secretary to Counsel. The Commission wishes to express its appreciation to these individuals for their dedication and their contribution to the work of the Commission during the year. We extend a sincere welcome to Howard Goldstein, Counsel who has recently joined the Commission. We also extend our thanks to the Commission's administrative and secretarial staff for their support and assistance during the past year.

During the 1994-95 year, the Commission looks forward to the continuation of work on our projects in process, and to the further development of our research agenda in consultation with members of the bar, the judiciary, agencies of the government, academics, and other interested persons in the community.

APPENDIX A

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report
Report No. 1 [The Rule Against Perpetuities]	1965
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966
Report No. 2 [The Wages Act: Assignment of Wages]	1965
Report No. 3 on Personal Property Security Legislation	1965
Report No. 3A on Personal Property Security Legislation	1966
Report on The Evidence Act: Admissibility of Business Records	1966
Report on The Mechanics' Lien Act	1966
Supplementary Report on The Mechanics' Lien Act	1967
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966
Report on The Execution Act: Exemption of Goods from Seizure	1966
Report on the Law of Condominium	1967
Report on the Basis for Compensation on Expropriation	1967
Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	1968
Annual Report 1967	1968
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968
Report on The Protection of Privacy in Ontario	1968
Report on Section 183 of The Insurance Act	1968
Report on Trade Sale of New Houses	1968
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968

Title	Date of Report
Report on Limitation of Actions	1969
Second Annual Report 1968	1969
Report on the Age of Majority and Related Matters	1969
Report on the Status of Adopted Children	1969
Report on Family Law, Part I: Torts	1969
Report on Section 20 the The Mortgages Act	1970
Report on Family Law, Part II: Marriage	1970
Third Annual Report 1969	1970
Report on Actions Against Representatives of Deceased Persons	1970
Report on the Coroner System in Ontario	1971
Report on Sunday Observance Legislation	1971
Report on Land Registration	1971
Fourth Annual Report 1970	1971
Report on The Change of Name Act	1971
Report on The Mortgages Act, Section 16	1971
Report on Development Control	1971
Report on Powers of Attorney	1972
Report on Occupiers' Liability	1972
Report on Consumer Warranties and Guarantees in the Sale of Goods	1972
Report on Review of Part IV of The Landlord and Tenant Act	1972
Fifth Annual Report 1971	1972
Report on the Non-Possessory Repairman's Lien	1972
Report on the Administration of Ontario Courts, Part I	1973
Sixth Annual Report 1972	1973
Report on the Administration of Ontario Courts, Part II	1973
Report on Family Law, Part III: Children	1973
Report on The Solicitors Act	1973
Report on Motor Vehicle Accident Compensation	1973
Report on the Administration of Ontario Courts, Part III	1973
Report on Family Law, Part IV: Family Property Law	1974

Title	Date of Report
Report on Family Law, Part V: Family Courts	1974
Seventh Annual Report 1973	1974
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974
Eighth Annual Report 1974	1975
Report on Family Law, Part VI: Support Obligations	1975
Report on Mortmain, Charitable Uses and Religious Institutions	1976
Report on Landlord and Tenant Law	1976
Report on the Law of Evidence	1976
Ninth Annual Report 1975	1976
Report on Changes of Name	1976
Report on the Impact of Divorce on Existing Wills	1977
Tenth Annual Report 1976	1977
Eleventh Annual Report 1977	1978
Report on Sale of Goods	1979
Twelfth Annual Report 1978	1979
Report on Products Liability	1979
Thirteenth Annual Report 1979	1980
Report on the Enforcement of Judgment Debts and Related Matters, Part I	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981
Fourteenth Annual Report 1980-81	1981
Report on Witnesses Before Legislative Committees	1981
Report on Class Actions	1982
Fifteenth Annual Report 1981-82	1982
Report on the Enforcement of Judgment Debts and Related Matters, Part IV	1983
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983
Report on Powers of Entry	1983
Sixteenth Annual Report 1982-83	1983
Report on the Law of Trusts	1984
Seventeenth Annual Report 1983-84	1984

Title	Date of Report
Report on Human Artificial Reproduction and Related Matters	1985
Twentieth Anniversary Report 1984-85	1985
Twenty-First Annual Report 1985-86	1986
Report on Political Activity, Public Comment and Disclosure by Crown Employees	1986
Report on Amendment of the Law of Contract	1987
Report on the Law of Mortgages	1987
Twenty-Second Annual Report	1987
Report on Compensation for Personal Injuries and Death	1987
Report on Contribution Among Wrongdoers and Contributory Negligence	1988
Report on Timesharing	1988
Twenty-Third Annual Report 1987-88	1988
Study Paper on Wrongful Interference with Goods	1989
Report on the Law of Standing	1989
Report on Covenants Affecting Freehold Land	1989
Report on Liability of the Crown	1989
Report on Damages for Environmental Harm	1990
Report on the Basis of Liability for Provincial Offences	1990
Report on Administration of Estates of Deceased Persons	1991
Report on Exemplary Damages	1991
1991 Ontario Law Reform Commission Report	1991
Appointing Judges: Philosophy, Politics and Practice	1991
Report on Child Witnesses	1991
Report on Testing for AIDS	1992
Report on Public Inquiries	1992
Summary of Recommendations	1992
Annual Report 1991-92	1992
Report on Drug and Alcohol Testing in the Workplace	1992
Report on the Powers of the Ontario Film Review Board	1992
Study Paper on Litigating the Relationship Between Equity and Equality	1993
Annual Report 1992-93	1993
Report on Family Property Law	1993

Report on the Rights and Responsibilities of Cohabitants Under the <i>Family Law Act</i>	1993
Consultation Paper on the Use of Jury Trials in Civil Cases	1994
Annual Report 1993-94	1994

Copies of the Commission's Reports that are still in print may be ordered from Publications Services, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada M7A 1N8. Telephone (416) 326-5300. Toll free long distance 1-800-668-9938.

APPENDIX B

IMPLEMENTATION OF THE REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report No. 1 [The Rule Against Perpetuities]	1965	<i>The Perpetuities Act, 1966,</i> S.O. 1966, c. 113
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966	<i>do.</i>
Report No. 2 [The Wages Act: Assignment of Wages]	1965	<i>The Wages Amendment Act,</i> 1968, S.O. 1968, c. 142
Report No. 3 on Personal Property Security Legislation	1965	<i>The Personal Property Security Act, 1967, S.O.</i> 1967, c. 72
Report No. 3A on Personal Property Security Legislation	1966	<i>do.</i>
Report on The Evidence Act: Admissibility of Business Records	1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51,</i> s. 1
Report on The Mechanics' Lien Act	1966	<i>The Mechanics' Lien Act,</i> 1968-69, S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	1967	<i>do.</i>
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966	See <i>The Mechanics' Lien Amendment Act, 1975,</i> S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act,</i> 1975, S.O. 1975, c. 44

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>
Report on The Execution Act: Exemption of Goods from Seizure	1966	The Execution Amendment Act, 1967, S.O. 1967, c. 26
Report on the Law of Condominium	1967	<i>The Condominium Act, 1967, S.O. 1967, c. 13</i>
Report on the Basis for Compensation on Expropriation	1967	<i>The Expropriations Act, 1968-69, S.O. 1968-69, c. 36</i>
Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	1968	<i>The Sandwich Windsor and Amherstburg Railway Amendment Act, 1968, S.O. 1968, c. 120</i>
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968	<i>Divorce Act, S.C. 1967-68, c. 24, s. 26</i>
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> See <i>The Registry Amendment Act, 1978, S.O. 1978, c. 8, s. 1</i>
Report on The Protection of Privacy in Ontario	1968	See <i>The Consumer Reporting Act, 1973, S.O. 1973, c. 97</i>
Report on Trade Sale of New Houses	1968	See <i>The Ontario New Home Warranties Plan Act, 1976, S.O. 1976, c. 52</i>
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968	<i>The Landlord and Tenant Amendment Act, 1968-69, S.O. 1968-69, c. 58</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Limitation of Actions	1969	<p>See <i>The Highway Traffic Amendment Act (No. 2)</i>, 1975, S.O. 1975, c. 37</p> <p>The Fatal Accidents Amendment Act, 1975, S.O. 1975, c. 38</p> <p><i>The Trustee Amendment Act</i>, 1975, S.O. 1975, c. 39</p>
Report on the Age of Majority and Related Matters	1969	<i>The Age of Majority and Accountability Act</i> , 1971, S.O. 1971, c. 98
Report on the Status of Adopted Children	1969	<i>The Child Welfare Amendment Act</i> , 1970, S.O. 1970, c. 96, s. 23
Report on Family Law, Part I: Torts	1969	<i>The Family Law Reform Act</i> , 1978, S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	1970	<i>The Mortgages Amendment Act</i> , 1970, S.O. 1970, c. 54, s. 1
Report on Family Law, Part II: Marriage	1970	<p><i>The Civil Rights Statute Law Amendment Act</i>, 1971, S.O. 1971, c. 50, s. 55 (partial implementation)</p> <p><i>The Marriage Act</i>, 1977, S.O. 1977, c. 42</p>
Report on Actions Against Representatives of Deceased Persons	1970	<i>The Trustee Amendment Act</i> , 1971, S.O. 1971, c. 32, s. 2
Report on the Coroner System in Ontario	1971	<i>The Coroners Act</i> , 1972, S.O. 1972, c. 98
Report on Sunday Observance Legislation	1971	<i>The Retail Business Holidays Act</i> , 1975, S.O. 1975 (2nd Session), c. 9

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 134</i>
Report on Land Registration	1971	See <i>The Corporations Tax Amendment Act (No. 2)</i> , 1979, S.O. 1979, c. 89 <i>Land Registration Reform Act, 1984, S.O. 1984, c. 32</i>
Report on The Change of Name Act	1971	<i>The Change of Name Amendment Act, 1972, S.O. 1972, c. 44</i> <i>Change of Name Act, 1986, S.O. 1986, c. 7</i>
Report on Development Control	1971	<i>The Planning Amendment Act, 1973, S.O. 1973, c. 168, s. 10</i>
Report on Powers of Attorney	1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i> <i>Powers of Attorney Amendment Act, 1983, S.O. 1983, c. 74</i> <i>Mental Health Amendment Act, 1983, c. 75</i>
Report on Occupiers' Liability	1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
Report on Review of Part IV of The Landlord and Tenant Act	1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
Report on the Non-Possessory Repairman's Lien	1972	<i>Repair and Storage Liens Act, 1989, S.O. 1989, c. 17 (partial implementation)</i>
Report on the Administration of Ontario Courts, Part I	1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i>
		<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, ss. 19 and 25</i>
Report on the Administration of Ontario Courts, Part II	1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 162</i>
		See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
Report on Family Law, Part III: Children	1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i>
		<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i>
		<i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i>
		See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i>
Report on The Solicitors Act	1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 214(6)</i>
Report on the Administration of Ontario Courts, Part III	1973	<i>The Judicature Amendment Act, 1975, S.O. 1975, c. 30 (partial implementation)</i>
		See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
		<i>The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52 (partial implementation)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Family Law, Part IV: Family Property Law	1974	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> (partial implementation)
		<i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i> (partial implementation)
		<i>Family Law Act, 1986, S.O. 1986, c. 4</i> (partial implementation)
		See <i>The Land Titles Amendment Act, 1978, S.O. 1978, c. 7</i>
		<i>The Registry Amendment Act, 1978, S.O. 1978, c. 8</i>
Report on Family Law, Part V: Family Courts	1974	See <i>The Unified Family Court Act, 1976, S.O. 1976, c. 85</i>
		<i>The Children's Probation Act, 1978, S.O. 1978, c. 41</i> (partial implementation)
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 42</i>
Report on Family Law, Part VI: Support Obligations	1975	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> (partial implementation)
		<i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Mortmain, Charitable Uses and Religious Institutions	1976	<i>The Religious Organizations' Lands Act, 1979</i> , S.O. 1979, c. 45
		<i>The Anglican Church of Canada Act, 1979</i> , S.O. 1979, c. 46
		<i>The Registry Amendment Act, 1979</i> , S.O. 1979, c. 94, s. 17
		<i>Charities Accounting Amendment Act, 1982</i> , S.O. 1982, c. 11
		<i>Mortmain and Charitable Uses Repeal Act, 1982</i> , S.O. 1982, c. 12, s. 1(1)
Report on Landlord and Tenant Law	1976	<i>The Residential Tenancies Act, 1979</i> , S.O. 1979, c. 78 (partial implementation)
Report on Changes of Name	1976	<i>The Change of Name Amendment Act, 1978</i> , S.O. 1978, c. 28
		<i>The Vital Statistics Amendment Act, 1978</i> , S.O. 1978, c. 81, s. 1 (partial implementation)
		<i>Change of Name Act, 1986</i> , S.O. 1986, c. 7 (partial implementation)
		<i>Vital Statistics Amendment Act, 1986</i> , S.O. 1986, c. 9 (partial implementation)
Report on the Impact of Divorce on Existing Wills	1977	<i>The Succession Law Reform Act, 1977</i> , S.O. 1977, c. 40, s. 17(2)
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981	<i>Wages Amendment Act, 1983</i> , S.O. 1983, c. 68 (partial implementation)

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>Proceedings Against the Crown Amendment Act, 1983, S.O. 1983, c. 88</i>
		<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 177 (partial implementation)</i>
		Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981	Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)
Report on Class Actions	1982	<i>Class Proceedings Act, 1992, S.O. 1992, c. 6 (partial implementation)</i>
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983	<i>Creditors' Relief Amendment Act, 1985, S.O. 1985, c. 1 (partial implementation)</i>
Report on Political Activity, Public Comment and Disclosure by Crown Employees	1986	<i>Public Service and Labour Relations Statute Law Amendment Act, 1993, S.O. 1993, Chap. 38</i>
Report on Compensation for Personal Injuries and Death	1987	<i>Courts of Justice Amendment Act, 1989, S.O. 1989, c. 67 (partial implementation)</i>

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APPENDIX C

JUDICIAL AND ACADEMIC REFERENCES TO PUBLICATIONS OF THE ONTARIO LAW REFORM COMMISSION DURING THE PAST YEAR*

Report on the Basis for Compensation on Expropriation (1967)

Neill v. British Columbia, [1993] B.C.J. No. 1162

Report on Limitation of Actions (1969)

Modern Livestock Ltd. v. Kansa General Insurance Co., [1993]
A.J. No. 575

Report on Family Law, Part II: Marriage (1970)

Al-Smadi (Father and Next Friend of), [1994] M.J. No. 13

Report on the Coroner System in Ontario (1971)

Manson, "Standing in the Public Interest at Coroner's Inquests in
Ontario" (1988), 20 Ottawa L. Rev. 637
Granger, *Canadian Coroner Law* (1984)

Stanford v. Harris (1989), 38 Admin. L.R. 141

Report on Sunday Observance Legislation (1971)

Coles Book Stores Ltd. v. The Queen in Right of Ontario (1991),
60 O.R. (3d) 673, 88 D.L.R. (4th) 312

* This is a non-exhaustive list of articles and cases which have come to the Commission's attention during the period covered by this report (April 1, 1993 to March 31, 1994) in which the Commission's publications have been reviewed or considered. A cumulative list, including reviews and consideration in past years, is available from the Commission on request.

Report on Consumer Warranties and Guarantees in the Sale of Goods (1972)

Ogilvie (ed.), *Consumer Law* (1984)

Report on Powers of Attorney (1972)

Axler v. Axler, [1993] O.J. No. 1060

Report on Motor Vehicle Accident Compensation (1973)

Ison, *Policy Choices in Compensation Systems* (1994)

Linden and Klar, *Canadian Tort Law: Cases, Notes & Materials* (1994)

Report on Family Law, Part IV: Family Property Law (1974)

Hovius and Youdan, *The Law of Family Property* (1991)

Duca Community Credit Union Ltd. v. Duca Automotive Ltd., [1994] O.J. No. 1162

Buske v. Buske (1988), 63 O.R. (2d) 749 (Dist. Ct.)

Report on Family Law, Part VI: Support Obligations (1975)

Walsh v. Elliot, [1994] B.C.J. No. 292

Report on Sale of Goods (1979)

Barclays Business Credit Inc. v. Fletcher Challenge Canada Ltd. (1993), 13 O.R. (3d) 118

Report on Class Actions (1982)

Sutherland v. Canadian Red Cross Society, [1994] O.J. No. 315

Abdool v. Anaheim Management Ltd. (1993), 15 O.R. (3d) 39

Re Buday and Locator of Missing Heirs Inc. (1993), 16 O.R. (3d) 257

Bendall v. McGhaw Medical Corp. (1993), 14 O.R. (3d) 734

Report on Amendment of the Law of Contract (1987)

Dudka v. J. Milestone, [1994] N.S.J. No. 187

Report on Compensation for Personal Injuries and Death (1987)

Cunningham v. Wheeler, [1994] 1 S.C.R. 359

Report on Timesharing (1988)

Ziff, Principles of Property Law (1993)

Report on the Law of Standing (1989)

Hy and Zel's Inc. v. Ontario; Paul Magder Furs Ltd. v. Ontario, [1993]
3 S.C.R. 113

Report on Covenants Affecting Freehold Land (1989)

Ziff, Principles of Property Law (1993)

Report on the Basis of Liability for Provincial Offences (1990)

R. v. Nickel City Transport (Sudbury) Ltd. (1993), 14 O.R. (3d) 115

Appointing Judges: Philosophy, Politics and Practice (1991)

Symies v. Canada, [1993] 4 S.C.R. 695

Report on Exemplary Damages (1991)

Peeters v. Canada, [1993] F.C.J. No. 1146

Report on Child Witnesses (1991)

McGillivray, "Debunking Myths: Children in the Civil Courts"
Manitoba Law Review (1992), 21 Man. L.J. 151

R. v. G.S., [1994] B.J. No. 964
R. v. Toten (1993), 14 O.R. (3d) 225

Report on Testing for AIDS (1992)

Casswell, Book Review of Ontario Law Reform Commission Report on Testing for AIDS (1993), 72 Canadian Bar Rev. 265
Sears, Book Review of the Ontario Law Reform Commission, *Report on the Testing for AIDS* (1993), 4 Windsor Rev. of Legal & Soc. Issues 158

Report on Public Inquiries (1992)

Armstrong, "The Public Inquiry: Two Suggestions for Reform" (1994), 43 U.N.B.L.J. 377
Kaiser, "The Public Inquiry and the Presumption of Innocence: The Prospects for Mutual Survival" (1994), 43 U.N.B.L.J. 391
Roach, "Public Inquiries, Projections or Both?" (1994), 43 U.N.B.L.J. 415
Stalker, "The Projection of Individual Rights and the Public Inquiry" (1994), 43 U.N.B.L.J. 427

Hryciuk v. Ontario, [1994] O.J. No. 1086
Phillips v. Nova Scotia (Westray Mine Public Inquiry) (1993), 100 D.L.R. (4th) 79

Report on the Rights and Responsibilities of Cohabitants Under the Family Law Act (1993)

Holland and Stalbecker-Petley, *Cohabitation: The Law in Canada* (1994)
MacDonald, Weiler, Mesbur, Perkins and Wilton (eds.), *Law and Practice under the Family Law Act of Ontario* (1994)

Report on Family Property Law (1993)

MacDonald, Weiler, Mesbur, Perkins and Wilton (eds.), *Law and Practice under the Family Law Act of Ontario* (1994)

APPENDIX D

ONTARIO LAW REFORM COMMISSION ADVISORY BOARD

Madam Justice Rosalie S. Abella
Court of Appeal for Ontario

Joanne Campbell
General Manager
Metro Toronto Housing Co. Ltd.

Mr. Justice Marvin Catzman
Court of Appeal for Ontario

Marshall Cohen
C.E.O.
The Molson Companies Ltd.

Amie R. Dupin
Tory, Tory, DesLauriers & Birmingham

Her Honour Judge Mary F. Dunbar
Ontario Court of Justice
(Provincial Division)

Professor Margrit Eichler
Sociology Department
The Ontario Institute for Studies in Education

Catherine Frazee
Vice Chair
Workers' Compensation Appeals Tribunal

Robert Fulford

Professor Philippe Garigue
International Studies,
Glendon College

Edward L. Greenspan
Greenspan, Rosenberg

Mr. Justice Jack D. Ground
Ontario Court of Justice
(General Division)

Professor Peter W. Hogg
Osgoode Hall Law School
York University

Dr. Ron Ianni
President
University of Windsor

Roberta Jameson
Ombudsman

Mr. Justice John Jennings
Ontario Court of Justice
(General Division)

Stephen Lewis

Marie Marchand
Project Co-ordinator
Women into Apprenticeship

Chief Justice R. Roy McMurtry
Ontario Court of Justice
(General Division)

Associate Chief Justice John Morden
Court of Appeal for Ontario

J. Robert S. Prichard
President
University of Toronto

Mr. Justice Edward Saunders
Ontario Court of Justice
(General Division)

Graham Scott
McMillan, Binch

Mr. Justice James M. Spence
Ontario Court of Justice
(General Division)

Janet Stewart
Lerner & Associates

Professor Katherine Swinton
Faculty of Law
University of Toronto

Associate Chief Justice Robert J.K. Wahnsiey
Special Adviser to Chief Judge
Ontario Court of Justice
(Provincial Division)

APPENDIX E

GROUPS AND ORGANIZATIONS CONSULTED BY THE ONTARIO LAW REFORM COMMISSION

In its projects, the Ontario Law Reform Commission consults regularly with members of the Bench, the Bar, the academic community, provincial and federal government ministries and agencies, and various persons, organizations and governmental institutions in other jurisdictions. In addition to the foregoing, during 1993-94 the Commission consulted with a wide range of groups and organizations, including the following:

Alberta Employment Pension Division, Department of Labour

Alberta Law Reform Institute

Advocacy Resource Centre for the Handicapped

Canadian Life & Health Insurance Association

Molecular Genetics Laboratory, North York General Hospital

Canadian Bar Association - Ontario (Family Subsection)

Canadian Bar Association - Ontario (Pension Subsection)

Canadian Institute of Actuaries

Division of Clinical Genetics, The Hospital for Sick Children

Toronto Biotech

Information and Privacy Commissioner/Ontario

Ontario Federation of Labour

Superintendent of Financial Institutions - Canada

Treasury Board - Canada

Ontario Women's Health Bureau

Public Health Branch, Ontario Ministry of Health

Law Reform Commission of British Columbia

Chief Medical Director, Crown Life Insurance Company

Bioethics Department, The Hospital for Sick Children

Manitoba Pension Commission

Centre for Bioethics, University of Toronto

Cystic Fibrosis Foundation

Newfoundland Pension Benefits Standards Division, Department of Finance
Nova Scotia Pension Benefits Division, Department of Finance
Office of the Director of Employment Standards
Office of the Director of Labour Standards
Office of the Occupational Health and Safety Adviser
Ontario Labour Relations Board
Ontario Ministry of Labour
Ontario Ministry of Finance
Ontario Pension Board
Ontario Teacher's Superannuation Commission
Ontario Women's Directorate
Muscular Dystrophy Association of Canada
Pay Equity Commission
Pension Commission of Ontario
Policy Development Division, Ontario Ministry of the Attorney General
Quebec Pension Board
Superintendent of Pensions, New Brunswick
Superintendent of Pensions, Prince Edward Island
Superintendent of Pensions, Saskatchewan
Genetic Services, Chedoke-McMaster Hospital
Department of Genetics, The Hospital for Sick Children

APPENDIX F

OFFICERS AND STAFF ONTARIO LAW REFORM COMMISSION

Chair	John D. McCamus, MA, LL.B, LL.M
Vice Chair	Richard E.B. Simeon, PhD
Commissioners	Nathalie Des Rosiers, LL.B, LL.M Sanda Rodgers, BA, LL.B, BCL, LL.M Judge Vibert Lampkin, LL.B, LL.M*
Counsel	J.J. Morrison, BA (Hon), LL.B, LL.M, Senior Counsel Donald F. Bur, LL.B, LL.M, BCL, PhD Barbara J. Hendrickson, MA, LL.B, LL.M Howard Goldstein, BA (Hon), MFS, LL.B, LL.M Christine B. Henderson, BA, LL.B, is on secondment to the Legal Services Branch, Ministry of Health, until March 31, 1995.
Chief Administrator	Mary Lasica, BAA
Secretary to Chair	Tina Afonso
Librarian	Carol Frymer, BA
Secretaries to Counsel	Cora Calixterio D.M. Halyburton

* Appointed during the year

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AJ 51
-A 56

Government
Publications

FINAL REPORT

ONTARIO LAW REFORM COMMISSION



FINAL REPORT

ONTARIO LAW REFORM COMMISSION



The Ontario Law Reform Commission was established by the Ontario Government in 1964 as an independent legal research institute. It was the first Law Reform Commission to be created in the Commonwealth. It recommends reform in statute law, common law, jurisprudence, judicial and quasi-judicial procedures, and in issues dealing with the administration of justice in Ontario.

Commissioners

John D. McCamus, MA, LLB, LLM, *Chair*
Richard E.B. Simeon, PhD, *Vice Chair**
Nathalie Des Rosiers, LLB, LLM*
Sanda Rodgers, BA, LLB, BCL, LLM*
Judge Vibert Lampkin, LLB, LLM*

Counsel

J.J. Morrison, BA (Hon), LLB, LLM, *Senior Counsel*
Donald F. Bur, LLB, LLM, BCL, PhD
Barbara J. Hendrickson, MA, LLB, LLM

Chief Administrator

Mary Lasica, BAA

Administrative Assistants

Tina Afonso
Cora Calixterio

The Commission's offices at 720 Bay Street, Toronto, Ontario, Canada, M5G 2K, were closed on December 31, 1996. Enquiries may be directed to the Ministry of the Attorney General, at the same address.

* These Commissioners served during the period covered by this report. Their appointments expired, however, prior to its publication.



**Ontario
Law Reform
Commission**

To The Honourable Charles Harnick
Attorney General for Ontario

Dear Attorney:

I have the honour to present the *Final Report* of the Ontario Law Reform Commission, for the period ending December 31, 1996, in accordance with section 2(3) of the *Ontario Law Reform Commission Act*, R.S.O. 1990.

John D. McCamus
Chair

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INTRODUCTION

This *Final Report* of the Commission provides an account of the Commission's activities for the period from April 1, 1994 to December 31, 1996. It is the Commission's final published report. The Government of Ontario decided in May 1996 that the Commission's mandate should be terminated at the end of the calendar year. The Cabinet made this decision on the advice of a committee of government backbenchers who had been appointed by Cabinet to study various agencies, boards and commissions of the government with a view to effecting cost savings by closing those no longer considered by the committee necessary or desirable. The Ontario Law Reform Commission was one of twenty-two agencies abolished by Cabinet on the basis of the advice offered in the committee's first report dealing with advisory bodies. The Commission was not invited to make submissions to the committee during the deliberations leading up to its report.

This final report has been prepared by the Commission in order to discharge its responsibilities under section 2(3) of the *Ontario Law Reform Commission Act*, R.S.O. 1990. We have included in this report, in addition to the usual accounts of Commission activities during the reporting period, a brief history of the Commission's work. In so doing, we wish to create a permanent record of the Commission's achievements which will provide a factual basis for their measurement by others. As well, we wish to honour and express appreciation for the contributions of the many commissioners, staff members and consultants who have contributed much to the work of the Commission over the years and, by this means, to the administration of justice both within the province and beyond its borders.

At the time of its closure, the Commission was in the midst of its thirty-third year of service to the objective set out in its statutory mandate of recommending appropriate reforms of the laws of the province and of the administration of justice. From modest beginnings in 1964, in terms of financial support and staffing, the Commission gained in strength over the years and by the early 1990's the Commission employed a staff including as many as six full-time research lawyers, and had an annual budget of 1.6 million. This trend was reversed in fiscal 1993-94, however, as the first of a series of budget cuts reduced the Commissioner's allotment by thirty-seven percent. The Commission's annual budget at the time of its closure, at the end of 1996, was approximately \$560,000.00 per annum.

At one level, then, the recent history of the Commission has been one of adjusting to reduced resources, dismissing valued personnel and attempting to meet the challenge of "doing more with less". At another and more positive level, however, it has been a period of commitment and achievement by our dedicated staff and consultants. Notwithstanding the difficulties flowing from fiscal restraint and the uncertainties concerning their professional situation, our staff continued to serve the Commission well by producing law reform work of high quality, often in collaboration with academic consultants of the highest rank and reputation. Indeed, during the reporting period, the Commission released six Commission reports and eight

volumes of study papers. All of these documents are more fully described in a subsequent chapter of this report.

Prior to the Cabinet decision to terminate the Commission, three major reports had been released, entitled *Report on Pensions as Family Property: Valuation and Division*, *Report on Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes* and *Report on the Law of Coroners*. The Commission had also completed a study paper, entitled *Study Paper on the Prospects for Civil Justice*.

In the *Report on Pensions as Family Property: Valuation and Division*, the Commission makes recommendations for reform of the law relating to the division of pensions on marriage breakdown. In formulating its proposals for reform of this highly complex area, the Commission attempted to devise a scheme that appropriately balances the needs of the parties, the philosophy of the *Family Law Act* with respect to the equal sharing of assets on marriage breakdown, and the concerns of plan administrators who bear responsibility for pension division at source.

Implementation of the Commission's recommendations would virtually eliminate the need for the high volume of time-consuming and expensive litigation on pension matters endured by many couples who seek to equalize pension assets under the current law of Ontario. This report is the last in a trilogy of reports undertaken by the Commission in 1993 dealing with the *Family Law Act*. The other two reports—*Report on Family Property Law* and *Report on the Rights and Responsibilities of Cohabitants Under the Family Law Act*—were issued in 1993.

The *Report on Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes* examines a number of tribunals and adjudicators involved in the resolution of disputes that arise in the workplace, focusing particularly on the time that it takes to resolve such disputes, and on the duplication of proceedings, that is, the ability to bring successive complaints before different tribunals arising out of a single dispute. The Commission focused its attention on two options for reform that will resolve the concerns identified by the Commission without adverse financial implications. The first option involves the nature of the procedures that are followed by the tribunals in resolving disputes. The second involves the structure and organization of the various tribunals that have been given the responsibility of adjudicating disputes arising in the workplace. The recommendations made by the Commission propose a scheme that would reduce delay, and reduce or eliminate the duplication of proceedings that can occur under the present law of Ontario.

The *Report on the Law of Coroners* reexamines the law and the operation of the coroner system in Ontario in the light of recent developments in the legal system that have had or may in the future have an impact on the coroner system. Developments in the law of standing, in the application of the duty of "fairness" by the courts to statutory decision-makers like coroners and the entrenchment of the *Canadian Charter of Rights and Freedoms* have dramatically changed the legal environment in which coroners conduct inquests and in which the province can design investigative powers and procedures for hearings.

The report sets forth a series of recommendations which would refashion the coroner system in order to meet the requirements, either explicit or implicit, in these changes to the legal environment. Further, the Commission makes a series of recommendations designed to enhance the capacity of the system to cope with the increasing complexity of the legal environment within which inquests are conducted, as well as a series of measures designed to facilitate certain efficiencies in the operation of the coroner system.

The *Study Paper on the Prospects for Civil Justice* was published by the Commission in collaboration with the Ontario Civil Justice Review. It includes a paper prepared by Professor Roderick A. Macdonald, of the Faculty of Law, McGill University, and commentaries prepared by a distinguished panel of Canadian, American, and English experts. Professor Macdonald's paper addresses the critical policy issues involved in a fundamental reconsideration of civil disputing in the province.

When the Cabinet decision to close the Commission was announced in May, 1996, the Commission had on its agenda ten projects in various stages of completion. The Cabinet decision provided for a period of seven months prior to closure in order to facilitate an orderly winding up of the affairs of the Commission. Accordingly, the Commission and its staff resolved to complete as much of this work in progress as possible in an attempt to avoid losing the intellectual capital already invested in this work. In the end, the Commission was able to complete four more reports entitled:

- *Report on the Use of Jury Trials in Civil Cases*
- *Report on Genetic Testing*
- *Report on the Law of Charities*
- *Report on Basic Principles of Land Law*

In addition, the Commission completed and published four sets of study papers entitled:

- *Rethinking Civil Justice: Research Studies for the Civil Justice Review*
- *Study Paper on Assisted Suicide, Euthanasia and Foregoing Treatment*
- *Study Paper on Psychological Testing and Human Rights in Education and Employment*
- *Study Paper on Legal Aspects of Long Term Disability Insurance*

These reports and study papers are briefly described below and are discussed at greater length in the body of this report.

The *Report on the Use of Jury Trials in Civil Cases* arose from a request of the Deputy Minister that the Commission consider the role of jury trials in civil cases and, more particularly, consider whether the costs imposed on the administration of justice by jury trials outweighed their benefit.

The Commission engaged in extensive consultations and studies of the use of juries in civil cases. The Commission concluded that civil jury trials do not cost taxpayers a significant amount, and do not result in increased use of courtroom facilities. Moreover, consultations with judges, lawyers, and jurors indicated that the individuals actually involved in such trials are in favour of their continued existence by a substantial majority. In the view of some at least, trial by jury in a civil case may be essential to a fair process in some circumstances.

The report then turns to consider a number of specific issues. The Commission recommends against user fees imposed on a party to an action who requires that the action be tried with a jury. Further, the Commission concluded that the legislation prohibiting a jury in actions against government should be repealed. Finally, in an effort to preserve the presumption in favour of the availability of the jury, the report concludes that certain amendments should be made regarding the right to dispense with the jury, either before or at trial.

The *Report on Genetic Testing* is the third in a series of four projects initiated by the Commission with respect to the use of modern testing technologies. The series considers when and how to give recognition to the individual's right to privacy.

The *Report on Genetic Testing* considers the development of genetic testing and how the information derived therefrom raises serious concerns about privacy and confidentiality. These concerns are exacerbated by the ability of genetics to predict health risks not only for the individual tested, but for blood relatives and potential offspring. While genetic information is unique from all other information, it can be subsumed within the context of medical information generally. The number of possible abuses of genetic information - denial of insurance, discrimination in employment, or an increase in litigation, to name but three—are reviewed by the report.

The report sets out a comprehensive set of recommendations designed to balance the legitimate needs for the use of genetic testing in various areas of activity under provincial jurisdiction against the legitimate need to protect the privacy interests of the subjects of genetic testing.

The *Report on the Law of Charities* responds to a reference on this topic to the Commission by the Attorney General. The terms of reference invited the Commission to examine and make recommendations concerning a number of questions which can be grouped under the following four topics; (1) the legal rules which determine the status of charities; (2) the legal forms of charities (trusts, corporations, and unincorporated associations) their varying powers, and the different liabilities and powers of trustees and directors of corporations; (3) the different sources of revenue for different kinds of charities and the manner in which the law restricts, to some extent, sources of revenue open to charities; and (4) the various organizations and groups who participate in the supervision of charities and the problems that result from the complex structure of its regulation.

The report recommends a comprehensive rethinking, redrafting, and re-organizing of the laws governing nonprofit organizations in Ontario on each of the four topics identified in the

reference. In the Commission's view, much of the current legal framework is anachronistic, confused and contradictory and as a consequence, the government of Ontario is not, in the Commission's view, able to adequately fulfill its traditional facilitative and protective mandate in the sector. The report sets out a comprehensive plan for modernization of the law applicable to charities and the governmental supervisory regimes to which they are subject.

In the *Report on Basic Principles of Land Law*, the three topics of land law examined are successive interests, co-ownership, and easements. The basic principles of Ontario land law are derived from English common law, supplemented by old English statutes which were either made part of Ontario law by reception in 1792 or were the models from which Ontario statutes were copied. Considerable reform of basic principles of land law has been enacted in other Commonwealth countries, including England, and the United States of America. In Canada, including Ontario, there has been little significant reform of basic principles, although there has been reform in particular areas such as residential tenancies and condominiums.

Four themes are apparent in our treatment of these subjects. First, we have been concerned with bringing up to date the areas of law afflicted with archaic principles and rules. A second theme is clarification. This is closely related to the modernization of archaic doctrine since archaic doctrines tend to be obscure, mainly because their rationales are unrelated to modern conditions. More generally, we have attempted to identify and reform areas of law that require clarification. A third theme is the re-evaluation of conceptual explanations for existing doctrines. The fourth theme is simplification of the law by the assimilation of doctrines. The report develops detailed proposals for the reform of land law doctrine in the light of these guiding themes or principles.

Rethinking Civil Justice: Research Studies for the Civil Justice Review is comprised of two volumes of research papers examining various aspects of the administration of civil justice and its reform, which earlier were submitted to the Ontario Civil Justice Review. The Ontario Civil Justice Review was a joint initiative of the Government of Ontario and the Ontario Court of Justice (General Division). In its terms of reference, the review was mandated to develop an overall strategy to provide a structure for the civil justice system that is speedier, more streamlined and more efficient, and that will maximize the utilization of the public resources allocated to civil justice.

Although the Civil Justice Review was not a project of the Ontario Law Reform Commission, it was nonetheless anticipated that the Commission would contribute in some fashion to the work of the Review by undertaking special projects from time to time. In this respect, the Ontario Law Reform Commission collaborated with the Review in preparing a number of research studies, which addressed the following issues: (1) public perceptions of the civil justice system; (2) empirical studies of administrative agencies and court files; (3) the choice of governing instruments—defining an appropriate domain for civil claims; (4) the allocation of civil disputing forum; (5) enhancing the performance of the court system; (6) enhancing the performance of the administrative justice system; and (7) barriers to access to civil justice for disadvantaged groups. The resulting papers are published in these volumes.

The *Study Paper on Assisted Suicide, Euthanasia and Foregoing Treatment* was prepared by Professor J.M. Gilmour of Osgoode Hall Law School of York University with additional chapters by Karen Capen of the Ontario Bar, and Professors B. Sneiderman of the Faculty of Law, University of Manitoba and M. Verhoef of the Department of Clinical Epidemiology, University of Calgary. The paper examines the existing legislative framework governing decision-making about this area of health care, as well as the state of the law in other jurisdictions.

The analysis of the legal issues involved in assisted suicide and euthanasia is complicated by the fact that the issues fall under the jurisdiction of the federal government, the provincial government, or both. The question of decriminalizing assisted suicide and euthanasia is a matter that must be determined by the federal government. However, health care is primarily regulated by the provinces. There are, then, aspects of the law affecting assisted suicide and euthanasia that fall within provincial jurisdiction but there is also a need to consider federal law as it affects and overlaps with those aspects. Criminal law, for instance, sets limits on professional standards and practices of health care providers. The regulation of the health profession is a matter clearly within provincial jurisdiction. The provinces also have jurisdiction over the administration of the criminal justice system and therefore decisions about enforcement such as investigations, charges laid, and prosecutions are regulated by the provinces. The study paper makes recommendations with respect to reform of the legal environment in which decision-making on these issues occurs with euthanasia continuing to be a criminal offence.

The *Study Paper on Psychological Testing* was prepared by Professor A. Wayne MacKay of the Faculty of Law, Dalhousie University, and Pam Rubin of the Nova Scotia bar. The paper assesses standardized psychological testing and the legal redress open to those experiencing discrimination due to testing. The paper considers the following three aspects of psychological testing: (1) the history of testing and the attitudes surrounding its advent; (2) the impact of testing on employment; and (3) the use of testing in allocating educational opportunities and resources and the long term equality consequences of these decisions. Throughout the paper, the impact of psychological testing on privacy and the legal protections against privacy compromises are evaluated.

The paper explores the adverse impact testing has on various groups, and the basic equality guarantees under the Charter and the Ontario Human Rights Code. The paper examines the basic legal methods available in Ontario for challenging discrimination caused by testing. The Human Rights Commission process is particularly scrutinized in terms of the obstacles complainants' experience when bringing forward testing claims based on adverse impact or systemic discrimination and the difficulty the Commission has in sorting out expert technical testimony. The paper identifies problematic aspects of the use of psychological testing in the employment and education contexts and proposes solutions for them. Publication of this paper completes the Commission's series of projects on issues relating to modern testing technologies.

The *Study Paper on Legal Aspects of Long Term Disability Insurance* was prepared by Professor Marvin G. Baer, of the Faculty of Law, Queen's University. It examines a number of substantive and procedural issues relating to the existing schemes of long term disability

insurance. The substantive issues discussed relate to the application for coverage, the coverage provided by the policy, and the making of claims. The procedural issues addressed include the dispute resolution mechanism and the availability of information about coverage.

After reviewing several options, the paper recommends the reform of several basic insurance law doctrines, the adoption of the general provincial rules governing deceptive acts or practices, and the clarification and more active use, by the Insurance Commissioner, of the authority to control unfair or unreasonable contract terms and claims procedures.

Unlike the Commission reports described above, these various study papers do not, of course, represent the views of the Commission. The study papers on assisted suicide, euthanasia and foregoing treatment, psychological testing and long term disability insurance were initially intended as first steps in processes that would lead ultimately to the publication of Commission reports on these subjects. We are confident, however, that the views of the distinguished authors of these study papers will be of interest and assistance to various ministries of the Government of Ontario and to policy-makers in other jurisdictions.

BRIEF HISTORY OF THE ONTARIO LAW REFORM COMMISSION

INTRODUCTION

The period covered by this *Final Report* began with a celebration of the thirtieth anniversary of the enactment of the Commission's enabling legislation, *The Ontario Law Reform Commission Act, 1964*,¹ which came into force, upon receiving royal assent, on May 8, 1964.² As noted in the introductory chapter of this report, the period ended on December 31, 1996 with the closure of the Commission on the basis of a Cabinet decision taken in May, 1996. The publication of this *Final Report* provides the Commission with an opportunity to reflect upon its history, its work, and its role in the administration of justice within the province.

CREATION OF THE COMMISSION

Although the Attorney General had earlier established a number of law reform committees,³ the Ontario Law Reform Commission was the first independent legal research institute of its kind to be established in the Commonwealth.⁴ The genesis of the Commission has been credited to the following remarks, made in 1963, by Chief Justice McRuer:⁵

[The Attorney General's Committee^[6]] has been a good committee and it has done good work but it is not a committee that is intended to do research work nor is it equipped to do such work. It is properly composed of busy lawyers and Judges. Legal research to be effective must be organized,

¹ S.O. 1964, c. 78. See, now, *Ontario Law Reform Commission Act*, R.S.O. 1990, c. O.24.

² The anniversary was celebrated at a reception on December 13, 1994, at the Barristers' Lounge, Osgoode Hall, Toronto. This reception also marked the publication by The Osgoode Society of a biography of the Commission's founding Chair, the Honourable James C. McRuer, by Patrick Boyer. See Boyer, *A Passion for Justice*[:] *The Legacy of James Chalmers McRuer* (1994).

³ For example, the Attorney General's Committee on the Administration of Justice was established in 1956, and was composed of members of the bench, the bar, and court officials. It considered not only issues involving the administration of justice, but also matters of substantive law. The Committee was discontinued some time after the establishment of the Ontario Law Reform Commission. See Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada* (1986), at 176.

⁴ Since 1964, numerous jurisdictions have created similar commissions. For a review of the commissions established in the United Kingdom, Australia and Canada, see Hurlburt, *ibid*.

⁵ *Address to the Grand Jury of the High Court for Ontario at the opening of the High Court of Justice for Ontario*, January 7, 1963, quoted in Hurlburt, *supra*, note 3, at 204. See, also, Boyer, *supra*, note 2, at 336-37.

⁶ Discussed *supra*, note 3.

independent and financed as all other research. It should be so organized as to harness not only the experience and wisdom of Judges and practicing lawyers but the vast resources of academic scholarship that we have in Canada today.

Approximately one year later, upon being shown a draft of a proposal for the establishment of a law reform commission by the Deputy Attorney General, Chief Justice McRuer again stressed that it must be “an independent body away from the Attorney General’s Department, report to him, true, but set up so that it will operate independently as an independent commission”.⁷

Legislation to establish the Ontario Law Reform Commission was introduced in the Legislature on March 5, 1964. In response to a question on second reading whether the Commission’s reports would be made public, the Attorney General made it clear that the Commission itself would have the authority to determine such issues. He stated:⁸

The reports of the Commission, as outlined in the legislation proposed, would, I myself believe, be public reports and might well be tabled in the Legislature, but this is purposely not included in this bill at this time.... It could well be that those people we might have in mind to approach to be members of this commission might well feel that their recommendations and reports to the Attorney General should be confidential reports until their recommendations had been considered by the government.

It might well be that the commission would consider that their reports might be public reports. So far as I am concerned, I see no reason why they should not be public reports and either tabled in the Legislature or released for the information of the hon. members and the general public. I think that is a matter, Mr. Speaker, which must be left until the personnel of the commission are appointed.

The independence of the Commission was underscored once again by the Attorney General, during the debate on second reading, when he stated that the proposed legislation contained “no restrictions on what the commission may take as their area of inquiry or how they may proceed”.⁹ *The Ontario Law Reform Commission Act, 1964* received third reading on May 7, 1964, and, as noted above, received royal assent the following day.

THE COMMISSION’S MANDATE

Section 2(1) of the *Ontario Law Reform Commission Act*¹⁰ sets out the functions of the Commission, in the following terms:

⁷ Quoted in Boyer, *supra*, note 2, at 342.

⁸ Ont., Legislative Assembly, *Official Report of Debates (Hansard)* (March 11, 1964), at 1492.

⁹ *Ibid.*, at 1493.

¹⁰ *Supra*, note 1.

- 2.—(1) It is the function of the Commission to inquire into and consider any matter relating to,
- (a) reform of the law having regard to the statute law, the common law and judicial decisions;
 - (b) the administration of justice;
 - (c) judicial and quasi-judicial procedures under any Act; or
 - (d) any subject referred to it by the Attorney General.

In addition, section 2(2) of the Act provides that “[t]he Commission may institute and direct legal research for the purpose of carrying out its functions”. Accordingly, the Commission may initiate an inquiry into any of the matters set out in section 2(1) without seeking prior government approval. One commentator has observed that the statute provides “a remarkable degree of freedom and independence which was directly owing to McRuer’s arguments”.¹¹ The broad legislative mandate leaves considerable scope for the Commission to determine its own priorities. Subject only to the Attorney General’s reference power, the Commission defines its own agenda. In establishing its program, the Commission has been mindful, from the outset, that as a public agency “its relations with the administration and legislature should be such as to ensure a serious concern for its work and a reasonable expectation of the acceptance of the product of its work”.¹² Thus, the Commission has the autonomy to set its own priorities, and ensures that its work is attuned to the current public agenda.

THE COMMISSIONERS

Section 1(2) of the *Ontario Law Reform Commission Act* provides that “[t]he Commission shall be composed of three or more members appointed by the Lieutenant Governor in Council”. One of the members may be designated by the Lieutenant Governor in Council as Chair.¹³ Historically, the Commission has been composed of five members, including a Chair and a Vice Chair.¹⁴ Until relatively recently, the Chair served on a full-time basis, while the Vice Chair and the other Commissioners served part-time. However, as a result of a reorganization of the Commission in 1992, the Chair has since been appointed on a part-time basis. Moreover, while the Commissioners were appointed originally to serve for an indefinite term, in recent years appointments have been made for a fixed term of three years, and typically have been subject to a single renewal.

¹¹ Boyer, *supra*, note 2, at 343.

¹² Ontario Law Reform Commission, *Annual Report 1967* (1968), para. 14, at 8.

¹³ *Ontario Law Reform Commission Act*, *supra*, note 1, s. 1(3).

¹⁴ While s. 1(3) of the *Ontario Law Reform Commission Act*, *ibid.*, provides for the designation of a chair, no specific statutory authority is provided for the appointment of a vice chair.

In the past thirty-two years, there have been eighteen members of the Commission,¹⁵ representing a considerable breadth of experience. There have been a former Chief Justice of the High Court of Justice (the Honourable James C. McRuer), a former Chief Justice of Ontario (the Honourable George A. Gale), one provincial court judge (the Honourable Judge Vibert Lampkin), one former federal cabinet minister (the Honourable Richard A. Bell), one former Member of Provincial Parliament (James R. Breithaupt), four current or former law deans (H. Allan Leal, J. Robert S. Prichard, John D. McCamus, and Sanda Rodgers), two law professors (Derek Mendes da Costa, and Nathalie Des Rosiers), one political science professor (Richard E.B. Simeon), one former chair of an administrative agency (Rosalie S. Abella), and five private practitioners (W. Gibson Gray, William R. Poole, Barry A. Percival, Earl A. Cherniak, and Margaret A. Ross).

THE COMMISSION'S PROGRAM

Section 2(1)(d) of the Act gives the Attorney General the power to refer any matter to the Commission. This power has been used regularly, although sparingly, by the government. More frequently, in recent years, the Commission has undertaken projects at the request of, and in consultation with, the government, without the requisite of a formal reference. However, in general, most of the Commission's program has been determined internally.

From the beginning, the Commission's agenda has had a dual focus. The Commission acknowledged early on that, for a variety of reasons, neither the government nor the legal profession was particularly interested in initiating or promoting reform of technical, "black-letter" law. It recognized, however, that, without such reform, the administration of justice would continue to be hampered by the arcane complexity of such law, and by its failure to adjust to contemporary social, economic, and political conditions. It was viewed as "essential", therefore, "that an independent law reform agency should adopt [such reform] as a matter of its legitimate and continuing concern".¹⁶ However, the Commission has not occupied itself exclusively with so-called "lawyers' law". It has often taken the opportunity to inquire into areas involving broader social policy.¹⁷

The Commission welcomed project suggestions from practicing lawyers, members of the judiciary, public officials, law teachers, and members of the public generally. In recent years,

¹⁵ The officers of the Ontario Law Reform Commission from 1964-1995, and the dates of their tenure, are set out in Appendix F. The permanent staff of the Commission from 1964-1995, and the years of their service, are set out in Appendix G.

¹⁶ *Annual Report 1967, supra*, note 12, para. 30, at 11.

¹⁷ Examples of the Commission's dual focus are provided below. A complete list of the Commission's publications appears in Appendix A.

new projects were added to the Commission's program in accordance with the Commission's project selection criteria, adopted in June 1993.¹⁸

METHODOLOGY

The Commission has followed essentially two organizational models in the conduct of its research. In the first model, a legal academic or other external expert is engaged to conduct the necessary research, and prepare a draft report for consideration by the Commission.¹⁹ In the second model, Commission counsel assume primary responsibility for conducting the necessary research, and writing the draft report. If necessary, outside experts, in this model, were engaged to conduct research with respect to specific, clearly defined issues.

Project proposals were considered by the Commission and, if accepted, were assigned either to one of the Commission counsel, or to an outside academic. In the case of large projects, the practice has been to appoint a project director who, in turn, engaged the necessary research team, subject of course to the Commission's approval.

The Commission has long acknowledged that "[t]he participation of the legal practitioner at all levels in a consultative and advisory capacity...is vital to the work of the Commission".²⁰ Today, consultation is fundamental to all policy development, and it became an increasingly important part of Commission practice. An advisory board was ordinarily constituted in connection with each Commission project, often comprising not only practitioners and other legal experts, but also experts in other relevant subject areas, as well as representatives of appropriate interest groups and other interested parties. In addition, broader consultations were often undertaken, for example, through the publication of a general request for submissions, or through the circulation of a consultation paper.

Once a draft report had been completed, it was placed on the agenda for consideration by the Commission. The author of the report and any necessary consultants would be present to assist the Commission in its deliberations. Whichever organizational model were adopted in any particular case—that is, whether the original draft report was prepared internally or externally—the final report, incorporating the decisions and rationale adopted by the Commission, was written by Commission counsel.

¹⁸ The Commission's project selection criteria are set out in Ontario Law Reform Commission, *Annual Report 1993-94* (1994), at 9-10.

¹⁹ From the beginning, the Commission has relied heavily for its research on outside academics. The reasons for adopting this organizational model, at least initially, are discussed in *Annual Report 1967*, *supra*, note 12, paras. 8-11, at 6-7.

²⁰ *Ibid.*, para. 12, at 7. See, also, *ibid.*, para. 113, at 28, where it is stated that "[t]he closest consultation with those in and out of the legal profession is necessary to avoid any attempt at problem-solving in a vacuum".

When completed, the final report was delivered to the Attorney General.²¹ While it is not required by the statute, as a matter of practice, all Commission reports were tabled by the Attorney General in the Legislature.

IMPLEMENTATION OF COMMISSION REPORTS

Any attempt to measure the success enjoyed by a law reform agency must consider the extent to which its proposals for reform have been implemented. In this respect, the Commission has enjoyed considerable success. The impact of the Commission's work on the law of Ontario has been both substantial and enduring. Since its inception, the Commission has issued ninety substantive reports.²² The majority of them have been implemented, either in whole or in part.²³

While the statistics indicate that the Commission has had a favourable implementation rate, the nature of the law reform process suggests that the true implementation rate might be somewhat higher. Most of the reports that have yet to be implemented are those that have been issued most recently by the Commission. This phenomenon, it is suggested, is due to "a certain inertia in the legislative process and the fact that developing and carrying out a legislative program is a long-term process".²⁴ For example, the Commission's *Report on Class Actions*, which was issued in 1982, was not implemented until ten years later. Since it takes time to achieve the necessary consensus, and to obtain the necessary time on the legislative agenda, "[i]t is unrealistic to expect early action on recommendations which call for a major legislative initiative".²⁵ Further, as the Commission has noted, there are often numerous extraneous factors affecting implementation.²⁶

²¹ Section 2(3) of the *Ontario Law Reform Commission Act*, *supra*, note 1, provides that "[t]he Commission shall report from time to time to the Attorney General".

²² This excludes the annual reports, study papers, consultation papers, and other publications issued by the Commission that do not contain recommendations for reform.

²³ Details of the implementation of the Commission's reports are set out in Appendix B, which identifies 54 reports that have received partial or total implementation. The half dozen reports recently published by the Commission have not yet had time for consideration by the Government. The implementation rate to date is thus close to two-thirds.

²⁴ Law Reform Commission of British Columbia, *Annual Report 1989/90* (1990), at 50.

²⁵ *Ibid.*

²⁶ *1991 Ontario Law Reform Commission Report* (1991), at 7.

Implementation is a function of many variables, only one of which is the cogency of the recommendations. Commissions make recommendations based on analysis of law and policy which the incumbent government may not share at any given moment. Far from taking away from the merit either of the recommendations or the government's response, it merely demonstrates that in public policy, the 'urgent' often overwhelms the 'important', and the duty to decide which is which belongs to governments.

We would be remiss in discharging our responsibilities, however, if we did not encourage the government of the day to attempt to find space on the legislative agenda for law reform measures. The modernization of the administration of justice requires ongoing attention. There are a number of existing commission reports that, if implemented, would not only improve the quality of justice administered by the system, but would also increase the efficiency with which that justice is administered.

Finally, we observe that the value of the Commission's reports cannot be measured solely by reference to the rate of legislative implementation. Regard must also be had to the various other ways in which the reports might influence law and policy, for example, through their impact on judicial decisions and legal scholarship. By this measure, as well, the Commission has enjoyed some considerable success. The Commission's reports have often been cited in judicial decisions in Ontario and throughout the rest of Canada, as well as in academic and other legal literature.²⁷

CONTINUITY AND CHANGE: THREE DECADES OF LAW REFORM

As we noted above, the Commission's agenda has always had a dual focus. From its earliest days, the Commission addressed a broad range of topics, from the highly technical subject of the rule against perpetuities, to its early work respecting the reform of matrimonial property law.²⁸

Throughout its history, the Commission has published numerous reports in which it addresses issues of contemporary social significance. Early examples include our *Report on The Protection of Privacy in Ontario* (1968), *Report on Sunday Observance Legislation* (1971), *Report on Motor Vehicle Accident Compensation* (1973), *Report on Family Law, Part IV: Family Property Law* (1974), *Report on Class Actions* (1982), *Report on Human Artificial Reproduction and Related Matters* (1985), and *Report on Political Activity, Public Comment and Disclosure by Crown Employees* (1986). More recent examples include our *Report on Damages for Environmental Harm* (1990), *Report on Child Witnesses* (1991), *Report on Testing for AIDS* (1992), *Report on Drug and Alcohol Testing in the Workplace* (1992), *Report on the*

²⁷ A non-exhaustive list of judicial and academic references to publications of the Ontario Law Reform Commission is set out in Appendix C.

²⁸ A complete list of the Commission's publications appears in Appendix A.

Rights and Responsibilities of Cohabitants Under the Family Law Act (1993) and *Report on Genetic Testing* (1996).

The Commission has also undertaken many projects involving technical and complex areas of the law. Some recent examples include our *Report on Contribution Among Wrongdoers and Contributory Negligence* (1988), *Report on the Law of Standing* (1989), *Report on Covenants Affecting Freehold Land* (1989), *Report on Administration of Estates of Deceased Persons* (1991), *Report on Pensions as Family Property: Valuation and Division* (1995), *Report on the Law of Charities* (1996), and *Report on Basic Principles of Land Law* (1996). It might be argued, however, that the attempt to locate reports along the social-policy/technical-law continuum is ultimately unproductive. While some might suggest that reports involving technical law are of interest primarily or exclusively to the legal profession, since the recommendations often attempt to render the law not only more equitable, but also more comprehensible, accessible, and affordable, in fact they are often of considerably broader interest. Further, the suggestion that such projects are of interest only to lawyers ignores the reality that even “lawyers’ law” has a significant policy dimension.

The work of the Commission evolved with the times. For example, the Commission diversified the range of individuals and groups with whom it consulted, and to whom its reports were addressed. Further, in addition to the advisory boards ordinarily constituted in connection with each project, the Commission created a continuing advisory board, in 1989, to advise the Commission generally with respect to its agenda and its work.²⁹ The Commission also broadened the range of its products to include not only formal reports, making recommendations for legislative reform, but also consultation papers and study papers. In addition, the Commission investigated new and innovative methods by which it might continue to fulfill its mandate. For example, the Commission engaged in a collaborative effort with the Ontario Civil Justice Review, the first effort of this kind undertaken by the Commission.

The Commission once noted that “[t]he central task of law reform is the systematic, long-range, continuous review of the law, a task that will last as long as the democratic process of making laws continues”.³⁰ Although the need for the performance of this task will continue, the context of law reform has changed considerably since the Commission was established in 1964.

In 1992, the Commission participated in a reevaluation of the Commission’s future role and mandate, which was undertaken particularly in light of the increasing fiscal crisis. The review focused on a broad range of issues, including not only the Commission’s role and mandate, but also its size and composition, staffing and internal structure, internal procedures, consultation processes, and budget. Although the Commission’s budget was ultimately reduced by approximately thirty-seven percent as a result of this review—resulting, among other things, in a reduction in the number of both professional and other staff—its continued existence was

²⁹ The current members of the Advisory Board are set out in Appendix D.

³⁰ Ontario Law Reform Commission, *Tenth Annual Report 1976* (1977), at 20.

secured, as it happens, only for the moment. During that process, the Commission took the opportunity to articulate once again the numerous advantages provided to the government by the existence of an independent law reform commission. For example, government policy divisions are often preoccupied with issues of immediate concern. An independent Commission, on the other hand, is able to undertake projects involving issues that might not be capable of instant resolution, but rather require careful consideration over a period of time. Similarly, an independent Commission is able to undertake projects involving issues that do not form part of the government's current political agenda, or issues that might be too contentious politically for the government to address directly. Moreover, an independent Commission is able to consider issues in which the government might have a conflict, for example, where the government's own procedures, policies, or institutional interests are under review.

Public interest or other advocacy groups are often committed to one side or the other of a specific social issue. An independent law reform commission, by contrast, is able to consider the issues, and make its recommendations, having regard to the more general public interest. It is also able to assess dispassionately the arguments advanced by opposing groups. An independent law reform commission is particularly well situated to enable it to integrate its research with public policy in formulating its proposals for reform.

Finally, the independence of the Commission, the prestige associated with its work, and its practice of publishing its findings in permanent form have enabled it, over time, to attract the energies and talents of a broad range of academic consultants and others with specialist expertise of the highest quality.

The developments that have occurred in law reform obviously had important implications for both the work of the Commission, and the way in which it was performed. In our view, however, neither those developments nor recent events have lessened the need for the kind of contribution that an independent law reform agency can make to the ongoing improvement and modernization of our legal system. With the demise of the Commission, then, one of the challenges confronting those who seek to improve both the quality and the accessibility of the administration of justice within the province must be to fashion new institutional arrangements capable of meeting that need.

PROJECTS COMPLETED DURING THE REPORTING PERIOD

In the period from April 1, 1994 to December 31, 1996, the Commission completed and published the following reports and study papers.

1. *Report on Pensions as Family Property: Valuation and Division*

In our *Report on Pensions as Family Property: Valuation and Division*, the Commission deals with four areas of reform. These are: (1) guidelines for the valuation of pensions for equalization purposes under the *Family Law Act*; (2) the creation of two additional settlement options where one of the family assets is a pension (a transfer of a share of the value out of the pension plan to another locked-in pension, and a benefit split of the pension to be paid at retirement); (3) the status of so-called “if and when” agreements and orders under section 51 of the *Pension Benefits Act*; and (4) the division of *Canada Pension Plan* benefits on marriage breakdown under the *Family Law Act*.

In developing options for sharing pension assets on marriage breakdown, the Commission was guided by a number of principles. These principles did not always point in the same policy direction, and it was necessary to attempt to achieve an appropriate balance in formulating our proposals. The major underlying principles guiding our analysis are:

- Family property should be divided fairly and equally with due regard being given to the unique nature of pension assets.
- The overall regime for dealing with pensions should be flexible enough to accommodate the different needs and circumstances of the parties involved.
- Given that the overall purpose of pensions, from both an individual and a societal perspective, is to provide income security on retirement, the regime should encourage the payment of pension benefits at retirement to both parties.
- Costs to the parties should be minimized and the need for recourse to the courts reduced.
- To the greatest extent possible, the process for pension division at source should be streamlined and should not place an undue financial burden on pension plan administrators.

In devising solutions to the problems posed by pension division and valuation under the current law of Ontario, we have attempted to devise a scheme that appropriately balances the needs of the parties, the philosophy of the *Family Law Act* with respect to the equal sharing of

assets on marriage breakdown, and the concerns of plan administrators who bear the responsibility for pension division at source.

Given the highly complex and varied nature of pension assets and the need for flexibility in the legal response to division and valuation issues, recommendations set forth in this report are necessarily rather complex. In the application of this scheme to individual cases, however, we believe that the choices made available to the parties under these proposals are both fair and easily understood.

2. *Report on Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes*

In our *Report on Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes*, the Commission examines administrative tribunals that resolve disputes arising in the workplace as a context within which to consider more general issues relating to the reform of administrative law. More particularly, the report examines the substantial length of time absorbed by dispute resolution processes in seven statutory contexts—under the *Labour Relations Act*, the *Employment Standards Act*, the *Industrial Standards Act*, the *Occupational Health and Safety Act*, the *Human Rights Code*, the *Pay Equity Act*, and the *Employment Equity Act*.

The report then considers two possible methods of reducing the time absorbed by these processes—a modification of the internal procedures of each tribunal and an elimination of the phenomenon of multiple proceedings arising from a single dispute.

The Commission concludes that the internal operation of each tribunal would be greatly facilitated by the introduction of three modifications to their rules of practice and procedure. First, each tribunal should provide for a case management system that would require each dispute to be moved along from complaint to hearing at a fixed pace. Experiments with case management in the civil courts appear to have enjoyed success in reducing delay. In order to test whether case management can successfully be transplanted from civil litigation to the administrative sphere, a case management system should be implemented on a trial basis. Second, each tribunal should implement a program of mediation, also to be tested through a pilot program. Third, to ensure that the tribunals' time and energy are not being devoted to disputes that have no reasonable chance of success, and to ensure that the rules of practice and procedure are followed, it is recommended that each tribunal have the capacity to dismiss cases without a hearing.

Multiple proceedings arise when parties take advantage of the fact that the jurisdiction of a number of administrative tribunals overlap and bring successive complaints to different tribunals. As a result of this practice, the resources of a number of tribunals have to be marshalled to resolve what is essentially one dispute. In the Commission's view this practice should be reduced if not eliminated by giving each tribunal the jurisdiction to interpret and apply

the governing legislation of other tribunals and by requiring all other tribunals to defer to a decision rendered in this manner.

In order to ensure that tribunals interpret and apply external law competently, the Commission also recommends that a system of training take place so that adjudicators in one administrative regime become familiar with the law of other related regimes. In addition, the Commission recommends that tribunals have (i) the ability to hold consolidated hearings, (ii) the ability to request a legal opinion from another tribunal, and (iii) the ability to make findings of fact in the event a dispute is transferred to another tribunal for adjudication. Finally, in order to ensure that a party has all remedies available and that the party does not get compensated more than once for the same injury, recommendations are made with regard to the compensation principles that should be applied in cases where more than one statute is applied by a single tribunal.

3. *Study Paper on the Prospects for Civil Justice*

The *Study Paper on the Prospects for Civil Justice* was prepared by Professor Roderick A. Macdonald of the Faculty of Law, McGill University. The paper was commissioned by the Fundamental Issues Group of the Ontario Civil Justice Review, in collaboration with the Ontario Law Reform Commission. Professor Macdonald was asked to identify and analyze the critical policy issues entailed in a fundamental reconsideration of civil disputing in Ontario.

Professor Macdonald's paper is divided into two main parts: recognizing, creating and formulating civil disputes (Part 1), and allocating civil disputes so as to enhance access to justice (Part 2). Part 1 of the study looks at the different ways by which the Legislature and the courts give concrete form to civil disputes. Part 2 of the study then examines the range of factors that might go into decisions about how, where and when to process different types of civil disputes.

In addition to Professor Macdonald's paper, the study paper includes commentaries by Harry W. Arthurs, William A. Bogart, Owen Fiss, Marc Galanter, Bryant Garth, Cyril Glasser, Deborah R. Hensler, George L. Priest, Peter H. Russell, Susan S. Silbey, Lynn Smith, Michael J. Trebilcock, and Garry D. Watson. The members of this distinguished panel were invited to review and reflect upon Professor Macdonald's paper and offer the Fundamental Issues Group further views on the reform of the civil justice system.

4. *Report on the Law of Coroners*

In the *Report on the Law of Coroners* the Commission re-examines the coroner system in the province. Since the Commission's 1971 *Report on the Coroner System in Ontario* there have been a number of significant developments. New challenges to the investigative and public inquiry roles of coroners have been presented by developments in the legal system. The recently developed legal duty to act "fairly" has been extended by judicial decisions to apply to the procedures of all public and statutory decision-makers, thus including coroners. The courts have

expanded the concept of “standing” at coroners inquests, which has resulted in an increase in the number of parties and the complexity associated with inquests. Finally, the entrenchment of the *Canadian Charter of Rights and Freedoms* constrains the manner in which the province can design investigative powers and procedures for hearings.

As a threshold question, the Commission considers whether there exists a compelling rationale for maintaining a publicly funded system to inquire into deaths in the province. The Commission concludes that a modern community that values the life and dignity of its members should have a vehicle for inquiring into suspicious and preventable deaths, and deaths of vulnerable members of the community.

The report examines the present law and operation of the coroner system in Ontario. This comprises a discussion of a variety of topics, including the appointment of coroners and the structure of the coroner system, the statutory duties to notify the coroner in the event of certain deaths, the investigation conducted by the coroner, and the ordering and conduct of coroners’ inquests. This latter topic includes a discussion of the general characteristics of the inquest, the duty of fairness, standing at coroners’ inquests and the right to participate, the admissibility of evidence, as well as the jury’s findings and recommendations. Also included is a discussion of certain constitutional considerations, including possible intrusion into federal jurisdiction and the impact of the *Charter*. Coroner and medical examiner systems in existence in Canada are reviewed and the differences that exist among the various jurisdictions are noted. The report then considers certain proposals for reform made in other provinces.

The Commission recommends that there should be two types of coroner, namely “investigating coroners” and “presiding coroners”. Investigating coroners would be medically qualified, and would be responsible for all initial investigations and pre-inquest case preparation. Presiding coroners, on the other hand, would be legally qualified, and would be responsible for conducting inquests.

In light of the *Canadian Charter of Rights and Freedoms* and the recent decision of the Supreme Court of Canada in *R. v. Colarusso*, the report concludes that, while some flexibility ought to be given to the coroner in the performance of a proper provincial function, the coroner’s current powers of entry, search, and seizure are too broad and far-reaching. The Commission recommends that the investigating coroner’s right to enter and take possession of the body, and evidence relevant to the investigation or subsequent inquiry, should be authorized by application to a justice of the peace, with a few exceptions.

In addition to retaining the current categories of mandatory inquest, the Commission recommends that a mandatory inquest should be conducted whenever a peace officer may have caused or contributed to a death while acting within the course of their duties.

With respect to standing at inquests, the report recommends that standing should be granted to any person or group that has a sufficient connection to the death or the subject-matter

of the inquest, or a genuine interest in a material issues, and can add an important dimension to the inquiry.

A number of the commission's recommendations will reduce the cost of conducting inquests. For example, in the case of mandatory inquests, the presiding coroner should have the power to dispense with the need for a jury if they are satisfied that the death was the result of natural causes and there is no allegation of want of care of culpable conduct. Moreover, the Commission concludes that the practice of conducting pre-inquest hearings should be made a formal component of the inquest process and it is anticipated this measure will reduce the time actually required at the inquest.

Finally, with respect to follow-up on the jury's recommendations, the Commission concludes that the Chief Coroner should be required to inquire as to their implementation. Also the Chief Coroner's office should compile and publish an annual report, which should include an analysis of the implementation of jury findings, including the specific responses of individuals or agencies affected by the recommendations.

5. Rethinking Civil Justice: Research Studies for the Civil Justice Review

These two volumes are comprised of research papers examining various aspects of the administration of civil justice and its reform, which earlier were submitted to the Ontario Civil Justice Review. The Ontario Civil Justice Review was a joint initiative of the Government of Ontario and the Ontario Court of Justice (General Division). In its terms of reference, the review was mandated to develop an overall strategy to provide a structure for the civil justice system that is speedier, more streamlined and more efficient, and that will maximize the utilization of the public resources allocated to civil justice. The review conducted its mandate through two working groups - the Interim Task Group, and the Fundamental Issues Group.

The Interim Task Group was responsible for identifying immediate points of pressure on the civil justice system, and for developing short-term and intermediate-term proposals for dealing with those pressures. The Fundamental Issues Group was responsible for dealing with longer range issues. Although the Civil Justice Review was not a project of the Ontario Law Reform Commission, it was nonetheless anticipated that the Commission would contribute in some fashion to the work of the Review by undertaking special projects from time to time. In this respect, the Ontario Law Reform Commission collaborated with the Fundamental Issues Group on a number of research studies, which addressed the following issues: (1) public perceptions of the civil justice system; (2) empirical studies of administrative agencies and court files; (3) the choice of governing instruments - defining an appropriate domain for civil claims; (4) the allocation of civil disputing forum; (5) enhancing the performance of the court system; (6) enhancing the performance of the administrative justice system; and (7) barriers to access to civil justice for disadvantaged groups. These resulting papers are published in these volumes.

Three papers were undertaken by colleagues in the Policy Branch of the Ministry of the Attorney General, Sandra Wain, Larry Fox and John Twohig. Ms. Wain examined the available

evidence relating to public perceptions of the administration of civil justice. Mr. Fox gathered together empirical evidence relating to the current operation of the system of administrative justice in Ontario. Mr. Twohig was the principal researcher in a project which mounted an empirical study of the workload of the civil courts over the past few decades.

A further series of commissioned papers grappled with the related questions of firstly, whether the creation of a right to make civil claims is the only or the preferable device for regulating conduct of various kinds and secondly, assuming that a decision to select this means of regulation has been taken, which types of civil claims are appropriate for the courts as opposed to other modes of adjudication. Professor Michael Trebilcock of the Faculty of Law, University of Toronto and his colleague, Professor Robert Howse, considered the role of civil justice as one of a possible range of instruments of governance. Professor Lorraine Eisenstat Weinrib of the Faculty of Law of the University of Toronto, and Professor Martha Jackman of the Faculty of Law, University of Ottawa, prepared papers examining the role of the courts in the resolution of civil disputes and the appropriateness of reallocating disputes either to the courts or to administrative agencies.

Another series of papers examined possibilities for reforming adjudicative processes both in the civil courts and in the system of administrative justice in Ontario. Professor Kent Roach of the Faculty of Law of the University of Toronto, prepared a paper examining various models for fundamental reform to civil litigation in the courts. Allan Stitt, Frances Handy and Peter A. Simm of the Ontario Bar examined the potential role for alternative dispute resolution in the civil justice system. Professor Iain Ramsay, of Osgoode Hall Law School of York University, examined the role and operation of the small claims courts. A paper considering a possible range of fundamental reforms to the administrative justice system was prepared by Margot Priest of the Ontario Bar.

Finally, various issues relating to the barriers to access to civil justice that impede effective use of the civil justice system by disadvantaged groups was prepared by Ian Morrison of the Clinic Resource Office and Professor Janet Mosher of the Faculty of Law of the University of Toronto.

6. *Report on the Use of Jury Trials in Civil Cases*

In March 1994, the Commission released its *Consultation Paper on the Use of Jury Trials in Civil Cases*. The Commission had been specifically requested to consider whether the additional public costs associated with jury trials could be justified in civil cases. The consultation paper arrived at a tentative conclusion that “juries should be available, upon judicial order, only where the predominant issues in the action concern the values, attitudes or priorities of the community and the ends of justice will be best served if the findings of fact or assessment of damages are made by a jury.” Further research and deliberations were undertaken before the Commission drafted its *Report on the Use of Jury Trials in Civil Cases*.

In the report, the Commission reviews historical information and the present law respecting the civil jury in Ontario. The experience in other jurisdictions regarding the availability and use of the civil jury, and the imposition of jury fees is examined. Also, the arguments both for and against the retention of the civil jury are re-evaluated by the report. The consultation process is described, the results of the Commission's empirical studies, into the relative length and cost of civil jury trials, are presented, and the impact of jury service on jurors is considered.

The Commission concludes that civil jury trials do not cost taxpayers a significant amount, and do not result in increased use of courtroom facilities. Moreover, consultations with judges, lawyers, and jurors indicate that the individuals actually involved in such trials are in favour of their continued existence by a substantial majority.

The report then turns to consider a number of specific issues. The Commission recommends that the present law should not be amended to impose a user fee on a party to an action who requires that the action be tried with a jury, as this would mean the ability to pay would interfere with a litigant's right to choose their mode of trial.

At present, actions against federal, provincial, and municipal governments must be tried without a jury. One of the arguments that is often invoked in favour of retaining the jury for civil matters is that the jury represents a safeguard against the abuse of power by government and, to a lesser extent, by judges. The Commission concludes that the legislation prohibiting a jury in actions against government should be repealed.

In an effort to preserve the presumption in favour of the availability of the jury, the report concludes certain amendments should be made regarding the right to dispense with the jury, either before or at trial. For example, a jury notice should be struck out as inappropriate where the nature of the law at issue is too complex or uncertain for the jury, when properly instructed, to comprehend; where the substantive issues in the case are essentially issues of law and the issues of fact are negligible; or where the issues of law and fact are inextricably interwoven. The Commission further recommends that judges should strike out a jury notice where they are of the opinion, after considering the nature of the case and the inconvenience that jury duty entails for many individuals, that a jury trial is not warranted.

Finally, the Commission recommends that trial judges should have the power to consider and represent the interests of the jurors, who are otherwise unrepresented at the trial, and to dismiss the jury on their own initiative where it would be appropriate to do so in order to protect the interests of jurors.

7. Study Paper on Assisted Suicide, Euthanasia and Foregoing Treatment

The *Study Paper on Assisted Suicide, Euthanasia and Foregoing Treatment* was prepared by Professor J.M. Gilmour of Osgoode Hall Law School at York University with additional chapters by Karen Capen of the Ontario Bar, and Professors B. Sniderman of the Faculty of

Law, University of Manitoba and M. Verhoef of the Department of Clinical Epidemiology, University of Calgary. The paper examines the existing legislative framework governing decision-making about this area of health care, as well as the state of the law in other jurisdictions.

The analysis of the legal issues involved in assisted suicide and euthanasia is complicated by the fact that the issues fall under the jurisdiction of the federal government, the provincial government, or both. The question of decriminalizing assisted suicide and euthanasia is a matter that must be determined by the federal government. However, health care is primarily regulated by the provinces. There are, then, aspects of the law affecting assisted suicide and euthanasia that fall within provincial jurisdiction but there is also a need to consider federal law as it affects and overlaps with those aspects. Criminal law, for instance, sets limits on professional standards and practices of health care providers. The regulation of the health profession is a matter clearly within provincial jurisdiction. The provinces also have jurisdiction over the administration of the criminal justice system and therefore decisions about enforcement such as investigations, charges laid, and prosecutions are regulated by the provinces.

The paper reviews the existing legislation, in particular the *Health Care Consent Act, 1996* and the *Substitute Decisions Act*, and the common law which provide a framework to govern health care decision-making by patients capable of making decisions and on behalf of those who are not capable. Essentially the patient's wishes are to prevail; if the patient is not capable of making decisions and their wishes are unknown or cannot be followed then the substitute decision maker, designated either by the patient or by legislation, is to make the decision in the patient's best interests. Since the legislation is new, there are still unanswered questions about its interpretation - for instance, the meaning of the term "best interests". The paper concludes that in making decisions to end life-sustaining treatment, for legal purposes, there is no distinction to be drawn between withholding and withdrawing life-sustaining treatment. The importance of addressing the potential for discriminatory considerations to insinuate themselves into the decision-making process is noted. Further study regarding health care and discrimination on the bases of disability, sex, age, race and other impermissible factors is proposed by the paper.

The issue of palliative care, an important option in end-of-life health care, is discussed in the paper. The availability of palliative care is limited and it is recommended that such programs be supported and expanded as an integral part of a comprehensive health care system. Also recommended is greater education and training for health care professionals in pain management and control, not just in palliative care but in general. Professional standards should make it clear that relief of suffering, through an appropriate regimen of pain medication, is a professional duty that health care providers owe patients. The study paper also recommends that the federal government amend the Criminal Code to confirm the legality of providing necessary treatment for the purpose of eliminating or alleviating pain, even if the treatment shortens life.

With regard to futile treatment, at the level of policy, the paper recommends that the issue be recognized as one suited to societal determination rather than medical determination.

The enforcement of criminal law in this area, which currently leaves much to prosecutorial discretion, is examined. The paper suggests that measures be taken to make the exercise of discretion more accountable and predictable, and to ensure that the law in this area reflects public morality. Accordingly, the study paper proposes that the federal government amend the Criminal Code to provide for the possibility of a less severe penalty in cases where an offender takes the life of another but acts out of compassion or mercy, although a maximum penalty of life imprisonment would still be retained. Further study is also recommended as to the feasibility of developing more detailed policy on charging decisions in these cases. Further, it is recommended that the federal government amend section 241(b) of the Criminal Code to permit physician-assisted suicide at the request of a person capable of making decisions, who is suffering from a terminal illness or from a chronic irreversible illness that causes them unbearable suffering that cannot be alleviated by means acceptable to the patient. This type of assistance would have to be provided under clearly defined limits and safeguards with euthanasia continuing to be a criminal offence.

Finally, the study paper argues that needed health and social services be adequately protected by the government. Patients and substitute decision makers can already make decisions to abate life-sustaining treatment, after which it is expected that death will follow. The health care and social services that are available must remain clearly supportive of a choice for continued life where that is the patient's wish or in their best interests.

8. *Report on Genetic Testing*

The project on genetic testing is the third in a series of four projects initiated by the Commission with respect to the use of modern testing technologies. The series considers when and how to give recognition to the individual's right to privacy.

The *Report on Genetic Testing* considers the development of genetic testing and how the information derived therefrom raises serious concerns about privacy and confidentiality. These concerns are exacerbated by the ability of genetics to predict health risks not only for the individual tested, but for blood relatives and potential offspring. While genetic information is unique from all other information, it can be subsumed within the context of medical information generally. The number of possible abuses of genetic information - denial of insurance, discrimination in employment, or an increase in litigation, to name but three - are reviewed by the report.

With particular reference to the use of genetic information for insurance purposes the Commission recommends that there should be a five-year moratorium on requests for genetic testing, questions about genetic conditions, and requests for access to genetic information in medical records, to provide an opportunity for all concerned to develop sound policies. Although comparable to a total prohibition, this could forestall a more radical legislative response based on public perceptions of the industry profiteering from "congenital bad luck".

As the use of genetic testing in the employment context becomes more pervasive, the Commission recommends that the Human Rights Commission issue an interpretive rule providing that genetic conditions, both present and future, fall within the ambit of its legislative protection, rendering the need for specific amendments to the Ontario Human Rights Code unnecessary. The Commission also recommends that specific and informed consent should be required before any type of genetic testing is performed on a worker or job applicant. Further, the Commission recommends that a uniform bill on health care information access and privacy should be enacted, which would apply to private and public sector employers, and outline clearly the duties of occupational physicians as well as the rules governing employer access to health information.

There are serious consequences linked to the introduction of DNA paternity testing in Canadian courtrooms as it will clearly distinguish social parents from biological parents at a time when the evolution of family law has moved away from an emphasis on genealogical origins towards respect for the real living context and interests of the child and the family. In light of these difficulties, we have concluded that regulations should be passed by the Ontario government, pursuant to section 11 of the *Children's Law Reform Act*, that take into account the advent of DNA testing and its serious implications, for both family stability and for the well-being of the child.

In genetic testing, respect for free and informed procreative decision-making, for vulnerable populations, for the freedom and responsibility inherent in "professionalism", and for the basic values of a given society also form the background against which the extent of potential physician or institutional liability for genetic malpractice must be situated and measured. Neither the courts, the physician, nor the patient, can be the sole arbiters of genetic malpractice. Accordingly, the Commission recommends that the Ministry of Health should establish regulations that prescribe minimum or appropriate standards for genetic testing, personnel training and education in the area of medical genetics, and the accreditation of genetic laboratories.

The Commission examines various issues concerning proprietary rights in genetic material and recommends that legislation should be enacted directing the courts to take an expanded approach to the characterization of human genetic material as an extension of the person, and thus crucial to his or her bodily integrity, and requiring express informed consent for any present or future use.

In the final chapter of the report the Commission concludes that in order to ensure the privacy of health information, including genetic information, data protection legislation should be enacted to regulate acquisition, safe storage, use and transfer of such information. As well, the legislation should establish effective mechanisms for enforcement, including a privacy right of action by the aggrieved party and significant penalties for persons or institutions who breach the legal requirements.

Further, the Commission recommends that a physician should be permitted to disclose genetic information to at-risk relatives only if the following conditions are satisfied: (1) reasonable attempts to elicit voluntary disclosure are unsuccessful; (2) there is a high probability of serious harm to an identifiable third party; (3) there is reason to believe that disclosure of the information will prevent harm; and (4) the disclosure is limited to the information necessary for diagnosis or treatment of the relative. Accordingly, where the genetic disorder is not serious, where it is likely to be diagnosed or is of relatively common knowledge, or where there is no known treatment or prevention, disclosure would not be permitted.

The Project Director for the Commission's genetic testing project was Professor Bartha Maria Knoppers, of the Faculty of Law, University of Montreal.

9. *Study Paper on Legal Aspects of Long Term Disability Insurance*

The *Study Paper on Legal Aspects of Long Term Disability Insurance* was prepared by Professor Marvin G. Baer, of the Faculty of Law, Queen's University. It examines a number of substantive and procedural issues relating to the existing schemes of long term disability insurance. The substantive issues discussed relate to the application for coverage, the coverage provided by the policy, and the making of claims. The procedural issues addressed include the dispute resolution mechanism and the availability of information about coverage.

The study paper reviews the nature of existing insurance law and its regulation, which has developed in a piece-meal fashion with a variety of administrative and legislative approaches designed to meet perceived shortcomings with the common law. The paper cautions against the further disintegration of insurance law by treating disability insurance law in isolation. Instead, it is recommended that improvements in the law, in relation to disability insurance, be undertaken as the first step in the reform and restatement of basic concepts common to all types of insurance and the greater harmonization of the existing parts of the *Insurance Act*.

The paper discusses the common law development of the unique insurance doctrines which govern the application for coverage, the obligations of the insured under the policy, and the making of claims. These doctrines are based on the recognized need, on the part of insurers, to identify and control the risks that they accept under the policy and to protect themselves from unmeritorious claims. However, the obligations placed on the insured have, in some instances, become too onerous, the limits on coverage too arbitrary or unexpected, and the remedy available to the insurer (denial of the entire claim) too oppressive. A number of ways to balance the interests of the parties more fairly are considered, including several ways that are already included in the *Insurance Act* and applied to other types of insurance.

After reviewing several options, the paper recommends the reform of several basic insurance law doctrines, the adoption of the general provincial rules governing deceptive acts or practices, and the clarification and more active use, by the Insurance Commissioner, of the authority to control unfair or unreasonable contract terms and claims procedures.

Some of the recommendations for reforms of basic insurance law doctrines are based on those adopted in Australia in 1984. They include reforms which place reasonable limits on the insured's obligation to disclose material facts during the application process; modifying insurance warranty doctrine so that an insurer could only rely on a prohibited act that has actually caused or contributed to the loss; and adopting a principle of proportionality which would limit the insured's recovery, rather than deny the claim completely, in the event of improper conduct. Other reforms are based on existing Canadian judicial and legislative developments, including a recognition of the evidentiary nature of the requirements after loss, an expanded application of the courts' authority to relieve against forfeiture, and an increased responsibility on insurers to compensate the insured for the costs that result from mishandling or delaying claims.

The paper also recommends that some terms of the policy be standardized and made mandatory, while others be subject to the control of the Insurance Commissioner who should act only after there has been an opportunity for public input. A similar type of administrative control now exists for Automobile insurance. The paper also contains a number of tentative recommendations on specific issues of coverage that have generated public concern.

The need for a cheaper and more efficient method of resolving disputes involving long term disability claims is recognized. The two existing systems used in Ontario for the resolution of long term disability claims are reviewed, and the paper recommends the expansion of the existing mediation and arbitration system, under the Automobile Part of the *Insurance Act*, to cover disputes involving long term disability claims.

10. *Study Paper on Psychological Testing and Human Rights in Education and Employment*

The *Study Paper on Psychological Testing* was prepared by Professor A. Wayne MacKay of the Faculty of Law, Dalhousie University, and Pam Rubin of the Nova Scotia bar. The paper assesses standardized psychological testing and the legal redress open to those experiencing discrimination due to testing. The paper considers the following three aspects of psychological testing: (1) the history of testing and the attitudes surrounding its advent; (2) the impact of testing on employment; and (3) the use of testing in allocating educational opportunities and resources and the long term equality consequences of these decisions. Throughout the paper, the impact of psychological testing on privacy and the legal protections against privacy compromises are evaluated.

In the survey of the history of standardized psychological testing the paper explores the cultural assumptions and economic pressures behind its popularity, the adverse impact testing has on various groups, and the basic equality guarantees under the Charter and the Ontario Human Rights Code. The discussion on the affect of testing on different groups within our society addresses people who are explicitly protected by legislation (for example racial and ethnic minorities, women, and persons with disabilities), others who are not protected by legislation (such as those whose first language is not English, and people without money), and

those who experience compound discrimination from testing in ways not contemplated by legislation, such as black women. The paper examines the basic legal methods available in Ontario for challenging discrimination caused by testing. The Human Rights Commission process is particularly scrutinized in terms of the obstacles complainants' experience when bringing forward testing claims based on adverse impact or systemic discrimination and the difficulty the Commission has in sorting out expert technical testimony.

In considering the impact of testing on employment, the paper reviews the longer history of American jurisprudence that informs nascent Canadian law in this area. The one Supreme Court of Canada case in this area, *Action Travail*, is examined closely, and the upheld Tribunal level decision is analyzed and put forward as the type of proactive order necessary to remedy the impact of discriminatory testing with respect to systemic discrimination. Some of the substantive claims by the publishers of these tests, in the employment context, are explored along with the acceptance of these claims by society in general and the affect this has on the complainants' chances of success. The growing area of "integrity" testing and its great potential for discriminatory effects is discussed. In addition, the paper proposes the establishment of an independent agency to scrutinize the technical evidence concerning the efficacy of tests and their adverse impacts.

Finally the role of testing in education is reviewed by the paper and found to be useful in some contexts but misleading, unreliable and discriminatory in others. The discussion on testing in education makes use of different case studies to illustrate various points, these include: IQ testing; the use of LSAT scores in law school admissions; special education testing; and computer-assisted student evaluation. The paper also undertakes a detailed examination of Charter protections against testing discrimination, under section 15.

11. *Report on the Law of Charities*

This comprehensive *Report on the Law of Charities* responds to a reference on this topic to the Commission by the Attorney General. The terms of reference invited the Commission to examine and make recommendations concerning a number of questions which can be grouped under the following four topics; (1) the legal rules which determine the status of charities; (2) the legal forms of charities (trusts, corporations, and unincorporated associations) their varying powers, and the different liabilities and powers of trustees and directors of corporations; (3) the different sources of revenue for different kinds of charities and the manner in which the law restricts, to some extent, sources of revenue open to charities; and (4) the various organizations and groups who participate in the supervision of charities and the problems that result from the complex structure of its regulation.

The report recommends a comprehensive rethinking, redrafting, and re-organizing of the laws governing nonprofit organizations in Ontario. Much of the current legal framework is anachronistic, confused and contradictory and as a consequence, the government of Ontario is not, in the Commission's view, able to adequately fulfill its traditional facilitative and protective mandate in the sector.

The report begins with an extensive examination of the available evidence concerning the functioning of the charities sector and of the various previous studies of the sector undertaken in Ontario, elsewhere in Canada, and abroad.

Against this background, the report examines the legal definition of the concept of charity. The common law definition of “charity” serves numerous functions in the law. The main function is to identify those entities entitled to the privileged treatment that charities receive under the law of trusts and under taxation laws. The report suggests that these various uses do not warrant various definitions and recommends that the law should continue to use one definition of the concept.

Further, although the report identifies a number of problems with the definition, and recommends solutions to them, the report does not recommend enactment by the province of a new statutory definition. Rather, the report recommends that the common law definition continue to evolve in an incremental fashion, through the traditional methods of the common law, in light of the suggestions for improvement made in the report.

No common-law jurisdiction, to our knowledge, has ever formally addressed the question of the appropriateness of the various legal forms available to charitable organizations. It has never been asked: What are the natural or essential characteristics of this type of social organization and what, as a consequence, are its appropriate legal forms? Rather, circumstances have led to the adaptation of three main forms of organization, principally the trust and the corporation, but also the unincorporated association, which in essence is based in contract.

In our proposals for reform of the organizational law, the report adopts the following general approach. To resolve issues relating to organizational form, we look to the basic area of law from which the form is derived. Where an issue relates chiefly to the charitable function of the form, however, we resolve it by choosing rules that are best for charity, and, subject to necessary but minor variations, in a way that is identical for all three forms. In other words, we attempt to treat issues relating to organizational form distinctly from issues relating to regulation of the sector, although, of course, there is no possibility of completely separate treatment. As examples, issues such as the content of the fiduciary duties, the powers of charitable fiduciaries, and the structure of governance of charities are all resolved in our recommendations by looking primarily to the law of trusts for charitable trusts, modern corporations law for the charitable corporation, and basic contract law for the unincorporated association. But the treatment of a charity’s property on dissolution, although inspired by the trust law *cy-près* doctrine, should, in our recommendation, be roughly the same regardless of the form of organization. And the state’s involvement in ensuring that charitable fiduciaries fulfill their obligations of loyalty and prudence, should, again in our recommendation, be the same, regardless of the form.

The historical origin of the supervisory authority of the provincial government in the sector is the prerogative *parens patriae* of the Crown. The Crown exercises a *parens patriae* jurisdiction over all charities through the Office of the Attorney General. The Crown also exercises a prerogative power in relation to the disposition of general gifts to charity that do not

involve the interposition of a trust. This power is often referred to as “prerogative *cy-près*”. Pursuant to it, the Crown through the Office of the Attorney General will devise a scheme for the specific disposition of property left to charity in general.

The historical *parens patriae* jurisdiction of the Crown has many facets. Generally speaking, at common law, the Attorney General was a necessary party in all proceedings in which there was a question regarding a charitable purpose trust or the powers of the trustees of a charitable purpose trust. Much, but apparently not all, of this power has now been delegated to the Public Trustee under the various provisions of the *Charities Accounting Act*.

In our proposals for reform of the provincial regulation of charities, we take the following general approach. First, we describe and recommend reforms to the agencies of the public administration in Ontario that have jurisdiction over charities, and other nonprofit entities, and we recommend reforms to the general regulatory framework governing charities. We also take up the principal areas of regulatory concern—fundraising, investment, political activity, and international activity—*seriatim*. Our basic recommendation is that a new agency—the Not-for-profit Organizations Committee—be established and be given ample and effective powers of supervision over the sector. With respect to the other matters, we recommend greater regulation of fundraising activity, but otherwise our proposals for the provincial regulation of charities involve essentially clarification and simplification of the current system.

The report also sets out an examination of the federal supervisory regime for charities under the *Income Tax Act* and makes a number of suggestions for reforming that system which would be complementary to our proposed reforms of the provincial regime with a view to ensuring that the regulatory regime as a whole is as simple and coherent as possible.

Professor David Stevens of the Faculty of Law of McGill University acted as the Project Director on this project.

12. *Report on Basic Principles of Land Law*

In the *Report on Basic Principles of Land Law* the three topics forming the subject matter are successive interests, co-ownership, and easements. The basic principles of Ontario land law are derived from English common law, supplemented by old English statutes which were either made part of Ontario law by reception in 1792 or were the models from which Ontario statutes were copied. Considerable reform of basic principles of land law has been enacted in other Commonwealth countries, including England, and the United States of America. In Canada, including Ontario, there has been little significant reform of basic principles, although there has been reform in particular areas such as residential tenancies and condominiums.

Four themes are apparent in our treatment of these subjects. First, we have been concerned with bringing up to date the areas of law afflicted with archaic principles and rules. The law of successive interests provides many striking examples. This area of law is subject to a body of highly complex and often obscure rules, many of which have no functional justification in

modern Ontario. It is true that many of these rules, such as the legal remainder rules and the rule of *Purefoy v. Rogers*, (1671) 2 Wms. Saund. 380, can be, and routinely are, circumvented by appropriate drafting. However, this does not mean that their continuation in the law is not harmful. These rules are on occasion not circumvented so that they apply with unpredictable and capricious consequences. Or, after the expense of litigation they are held to have no application. Ironically, the cost of this sort of litigation is likely to be borne by the less well off since persons with modest property holdings are more likely unable to obtain the skilled advice that should lead to the circumvention of the rules. Finally, there are some bodies of archaic doctrine that are not readily circumvented even by skilled drafting.

A second theme is clarification. This is closely related to the modernization of archaic doctrine since archaic doctrines tend to be obscure, mainly because their rationales are unrelated to modern conditions. More generally, we have attempted to identify and reform areas of law that require clarification. The rights and obligations of co-owners in the occupation and management of co-owned land provides an example. This is an important area of law having practical effect on the lives of many people and yet the law is often unclear. The report proposes a statutory formulation of the rights and obligations of co-owners, providing a clear and fair system for guiding behaviour and resolving disputes.

A third theme is the re-evaluation of conceptual explanations for existing doctrines. This point can best be clarified by an example. In the present law of co-ownership, the concept of the “four unities” has a pervasive impact on the operation of the law. On the one hand, the four unities limit the types of arrangements that may be created as joint tenancies. On the other hand, they provide the key concept for determining the ways in which a joint tenancy may be “severed” by being changed into a tenancy in common. The report evaluates the functional justifications for these roles played by the four unities and proposes removal of their relevance. New rules for the creation and severance of a joint tenancy are recommended.

The fourth theme is simplification of the law by the assimilation of doctrines. One example is the continuing distinctions in the present law between real and personal property. Generally, there is no justification in modern circumstances for such differences, and in this report we continue the trend toward removing them. For example, our proposed reform of the law dealing with successive interests will have the practical effect of removing a large body of special rules applicable only to land and will make the same doctrines apply to real and personal property. The other major examples of assimilation of doctrine is the increased assimilation of covenants affecting land and of easements which will be carried out by our proposals on easements.

Timothy Youdan, of the Ontario Bar, served as Project Director of this project.

APPENDICES

Attached to this final report are six Appendices relating to the activities and staff of the Commission. Appendix A lists the reports and other publications of the Commission since its inception in 1964. Appendix B indicates the extent to which the Commission's recommendations have been enacted. Appendix C provides a non-exhaustive list of articles and cases in which the Commission's reports have been reviewed or cited. Appendix D contains a list of the members of the Ontario Law Reform Commission Advisory Board. Appendix E sets out the officers of the Ontario Law Reform Commission from 1964-1996, and the dates of their tenure, and Appendix F provides a list of the permanent staff of the Commission from 1964-1996, and the years of their service.

APPENDIX A

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report
Report No. 1 [The Rule Against Perpetuities]	1965
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966
Report No. 2 [The Wages Act: Assignment of Wages]	1965
Report No. 3 on Personal Property Security Legislation	1965
Report No. 3A on Personal Property Security Legislation	1966
Report on The Evidence Act: Admissibility of Business Records	1966
Report on The Mechanics' Lien Act	1966
Supplementary Report on The Mechanics' Lien Act	1967
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966
Report on The Execution Act: Exemption of Goods from Seizure	1966
Report on the Law of Condominium	1967
Report on the Basis for Compensation on Expropriation	1967
Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	1968
Annual Report 1967	1968
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968
Report on The Protection of Privacy in Ontario	1968
Report on Section 183 of The Insurance Act	1968
Report on Trade Sale of New Houses	1968
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968

Title	Date of Report
Report on Limitation of Actions	1969
Second Annual Report 1968	1969
Report on the Age of Majority and Related Matters	1969
Report on the Status of Adopted Children	1969
Report on Family Law, Part I: Torts	1969
Report on Section 20 the The Mortgages Act	1970
Report on Family Law, Part II: Marriage	1970
Third Annual Report 1969	1970
Report on Actions Against Representatives of Deceased Persons	1970
Report on the Coroner System in Ontario	1971
Report on Sunday Observance Legislation	1971
Report on Land Registration	1971
Fourth Annual Report 1970	1971
Report on The Change of Name Act	1971
Report on The Mortgages Act, Section 16	1971
Report on Development Control	1971
Report on Powers of Attorney	1972
Report on Occupiers' Liability	1972
Report on Consumer Warranties and Guarantees in the Sale of Goods	1972
Report on Review of Part IV of The Landlord and Tenant Act	1972
Fifth Annual Report 1971	1972
Report on the Non-Possessory Repairman's Lien	1972
Report on Administration of Ontario Courts, Part I	1973
Sixth Annual Report 1972	1973
Report on Administration of Ontario Courts, Part II	1973
Report on Family Law, Part III: Children	1973
Report on The Solicitors Act	1973
Report on Motor Vehicle Accident Compensation	1973
Report on Administration of Ontario Courts, Part III	1973

Title	Date of Report
Report on Family Law, Part IV: Family Property Law	1974
Report on Family Law, Part V: Family Courts	1974
Seventh Annual Report 1973	1974
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974
Eighth Annual Report 1974	1975
Report on Family Law, Part VI: Support Obligations	1975
Report on Mortmain, Charitable Uses and Religious Institutions	1976
Report on Landlord and Tenant Law	1976
Report on the Law of Evidence	1976
Ninth Annual Report 1975	1976
Report on Changes of Name	1976
Report on the Impact of Divorce on Existing Wills	1977
Tenth Annual Report 1976	1977
Eleventh Annual Report 1977	1978
Report on Sale of Goods	1979
Twelfth Annual Report 1978	1979
Report on Products Liability	1979
Thirteenth Annual Report 1979	1980
Report on the Enforcement of Judgment Debts and Related Matters, Part I	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981
Fourteenth Annual Report 1980-81	1981
Report on Witnesses Before Legislative Committees	1981
Report on Class Actions	1982
Fifteenth Annual Report 1981-82	1982
Report on the Enforcement of Judgment Debts and Related Matters, Part IV	1983

Title	Date of Report
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983
Report on Powers of Entry	1983
Sixteenth Annual Report 1982-83	1983
Report on the Law of Trusts	1984
Seventeenth Annual Report 1983-84	1984
Report on Human Artificial Reproduction and Related Matters	1985
Twentieth Anniversary Report 1984-85	1985
Twenty-First Annual Report 1985-86	1986
Report on Political Activity, Public Comment and Disclosure by Crown Employees	1986
Report on Amendment of the Law of Contract	1987
Report on the Law of Mortgages	1987
Twenty-Second Annual Report	1987
Report on Compensation for Personal Injuries and Death	1987
Report on Contribution Among Wrongdoers and Contributory Negligence	1988
Report on Timesharing	1988
Twenty-Third Annual Report 1987-88	1988
Study Paper on Wrongful Interference with Goods	1989
Report on the Law of Standing	1989
Report on Covenants Affecting Freehold Land	1989
Report on Liability of the Crown	1989
Report on Damages for Environmental Harm	1990
Report on the Basis of Liability for Provincial Offences	1990
Report on Administration of Estates of Deceased Persons	1991
Report on Exemplary Damages	1991
1991 Ontario Law Reform Commission Report	1991
Appointing Judges: Philosophy, Politics and Practice	1991
Report on Child Witnesses	1991
Report on Testing for AIDS	1992

Title	Date of Report
Report on Public Inquiries	1992
Summary of Recommendations	1992
Annual Report 1991-92	1992
Report on Drug and Alcohol Testing in the Workplace	1992
Report on the Powers of the Ontario Film Review Board	1992
Study Paper on Litigating the Relationship Between Equity and Equality	1993
Annual Report 1992-93	1993
Report on Family Property Law	1993
Report on the Rights and Responsibilities of Cohabitants Under the <i>Family Law Act</i>	1993
Consultation Paper on the Use of Jury Trials in Civil Cases	1994
Annual Report 1993-94	1994
Report on Pensions as Family Property: Valuation and Division	1995
Report on Avoiding Delay and Multiple Proceedings in the Adjudication of Workplace Disputes	1995
Study Paper on Prospects for Civil Justice	1995
Report on the Law of Coroners	1996
Report on Genetic Testing	1996
Study Paper on Psychological Testing and Human Rights in Education and Employment	1996
Report on the Law of Charities	1996
Report on Basic Principles of Land Law	1996
Rethinking Civil Justice: Research Studies for the Civil Justice Review	1996
Study Paper on Legal Aspects of Long Term Disability Insurance	1996
Report on the Use of Jury Trials on Civil Cases	1996
Study Paper on Assisted Suicide, Euthanasia and Foregoing Treatment	1996
Final Report	1996

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APPENDIX B

IMPLEMENTATION OF THE REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report No. 1 [The Rule Against Perpetuities]	1965	<i>The Perpetuities Act,</i> 1966, S.O. 1966, c. 113
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966	<i>do.</i>
Report No. 2 [The Wages Act: Assignment of Wages]	1965	<i>The Wages Amendment Act, 1968, S.O. 1968,</i> c. 142
Report No. 3 on Personal Property Security Legislation	1965	<i>The Personal Property Security Act, 1967, S.O.</i> 1967, c. 72
Report No. 3A on Personal Property Security Legislation	1966	<i>do.</i>
Report on The Evidence Act: Admissibility of Business Records	1966	<i>The Evidence Amendment Act, 1966, S.O. 1966,</i> c. 51, s. 1
Report on The Mechanics' Lien Act	1966	<i>The Mechanics' Lien Act,</i> 1968-69, S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	1967	<i>do.</i>
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966	See <i>The Mechanics' Lien Amendment Act,</i> 1975, S.O. 1975, c. 43

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Ministry of Transportation and Communications Creditors Payment Act, 1975, S.O. 1975, c. 44</i>
		<i>The Public Works Creditors Payment Repeal Act, 1975, S.O. 1975, c. 45</i>
Report on The Execution Act: Exemption of Goods from Seizure	1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>
Report on the Law of Condominium	1967	<i>The Condominium Act, 1967, S.O. 1967, c. 13</i>
Report on the Basis for Compensation on Expropriation	1967	<i>The Expropriations Act, 1968-69, S.O. 1968-69, c. 36</i>
Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930	1968	<i>The Sandwich Windsor and Amherstburg Railway Amendment Act, 1968, S.O. 1968, c. 120</i>
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968	<i>Divorce Act, S.C. 1967-68, c. 24, s. 26</i>
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i>
		See <i>The Registry Amendment Act, 1978, S.O. 1978, c. 8, s. 1</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on The Protection of Privacy in Ontario	1968	See <i>The Consumer Reporting Act, 1973</i> , S.O. 1973, c. 97
Report on Trade Sale of New Houses	1968	See <i>The Ontario New Home Warranties Plan Act, 1976</i> , S.O. 1976, c. 52
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968	<i>The Landlord and Tenant Amendment Act, 1968-69</i> , S.O. 1968-69, c. 58
Report on Limitation of Actions	1969	<p>See <i>The Highway Traffic Amendment Act (No. 2), 1975</i>, S.O. 1975, c. 37</p> <p><i>The Fatal Accidents Amendment Act, 1975</i>, S.O. 1975, c. 38</p> <p><i>The Trustee Amendment Act, 1975</i>, S.O. 1975, c. 39</p>
Report on the Age of Majority and Related Matters	1969	<i>The Age of Majority and Accountability Act, 1971</i> , S.O. 1971, c. 98
Report on the Status of Adopted Children	1969	<i>The Child Welfare Amendment Act, 1970</i> , S.O. 1970, c. 96, s. 23
Report on Family Law, Part I: Torts	1969	<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	1970	<i>The Mortgages Amendment Act, 1970</i> , S.O. 1970, c. 54, s. 1

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Family Law, Part II: Marriage	1970	<p><i>The Civil Rights Statute Law Amendment Act, 1971, S.O. 1971, c. 50, s. 55 (partial implementation)</i></p> <p><i>The Marriage Act, 1977, S.O. 1977, c. 42</i></p>
Report on Actions Against Representatives of Deceased Persons	1970	<p><i>The Trustee Amendment Act, 1971, S.O. 1971, c. 32, s. 2</i></p>
Report on the Coroner System in Ontario	1971	<p><i>The Coroners Act, 1972, S.O. 1972, c. 98</i></p>
Report on Sunday Observance Legislation	1971	<p><i>The Retail Business Holidays Act, 1975, S.O. 1975 (2nd Session), c. 9</i></p> <p><i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 134</i></p>
Report on Land Registration	1971	<p>See <i>The Corporations Tax Amendment Act (No. 2), 1979, S.O. 1979, c. 89</i></p> <p><i>Land Registration Reform Act, 1984, S.O. 1984, c. 32</i></p>
Report on The Change of Name Act	1971	<p><i>The Change of Name Amendment Act, 1972, S.O. 1972, c. 44</i></p> <p><i>Change of Name Act, 1986, S.O. 1986, c. 7</i></p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Development Control	1971	<i>The Planning Amendment Act, 1973, S.O. 1973, c. 168, s. 10</i>
Report on Powers of Attorney	1972	<i>The Powers of Attorney Act, 1979, S.O. 1979, c. 107</i>
		<i>Powers of Attorney Amendment Act, 1983, S.O. 1983, c. 74</i>
		<i>Mental Health Amendment Act, 1983, S.O. 1983, c. 75</i>
Report on Occupiers' Liability	1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
Report on Review of Part IV of The Landlord and Tenant Act	1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
Report on the Non-Possessory Repairman's Lien	1972	<i>Repair and Storage Liens Act, 1989, S.O. 1989, c. 17 (partial implementation)</i>
Report on Administration of Ontario Courts, Part I	1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<p><i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i></p> <p><i>Courts of Justice Act, 1984, S.O. 1984, c. 11, ss. 19 and 25</i></p>
Report on Administration of Ontario Courts, Part II	1973	<p><i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 162</i></p> <p>See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i></p>
Report on Family Law, Part III: Children	1973	<p><i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i></p> <p><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i></p> <p><i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i></p> <p>See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i></p>
Report on The Solicitors Act	1973	<p><i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 214(6)</i></p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Administration of Ontario Courts, Part III	1973	<p data-bbox="698 240 953 365"><i>The Judicature Amendment Act, 1975, S.O. 1975, c. 30 (partial implementation)</i></p> <p data-bbox="698 399 986 519">See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i></p> <p data-bbox="698 553 964 676"><i>The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52 (partial implementation)</i></p>
Report on Family Law, Part IV: Family Property Law	1974	<p data-bbox="698 713 945 838"><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i></p> <p data-bbox="698 872 969 963"><i>The Family Law Reform Act, 1978, S.O. 1978, c. 2 (partial implementation)</i></p> <p data-bbox="698 997 938 1087"><i>Family Law Act, 1986, S.O. 1986, c. 4 (partial implementation)</i></p> <p data-bbox="698 1122 969 1212">See <i>The Land Titles Amendment Act, 1978, S.O. 1978, c. 7</i></p> <p data-bbox="743 1246 969 1339"><i>The Registry Amendment Act, 1978, S.O. 1978, c. 8</i></p>
Report on Family Law, Part V: Family Courts	1974	See <i>The Unified Family Court Act, 1976, S.O. 1976, c. 85</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>The Children's Probation Act, 1978, S.O. 1978, c. 41 (partial implementation)</i>
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 42</i>
Report on Family Law, Part VI: Support Obligations	1975	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i>
		<i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i>
Report on Mortmain, Charitable Uses and Religious Institutions	1976	<i>The Religious Organizations' Lands Act, 1979, S.O. 1979, c. 45</i>
		<i>The Anglican Church of Canada Act, 1979, S.O. 1979, c. 46</i>
		<i>The Registry Amendment Act, 1979, S.O. 1979, c. 94, s. 17</i>
		<i>Charities Accounting Amendment Act, 1982, S.O. 1982, c. 11</i>
		<i>Mortmain and Charitable Uses Repeal Act, 1982, S.O. 1982, c. 12, s. 1(1)</i>
Report on Landlord and Tenant Law	1976	<i>The Residential Tenancies Act, 1979, S.O. 1979, c. 78 (partial implementation)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Changes of Name	1976	<p data-bbox="686 258 927 352"><i>The Change of Name Amendment Act, 1978, S.O. 1978, c. 28</i></p> <p data-bbox="686 387 945 512"><i>The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)</i></p> <p data-bbox="686 546 945 640"><i>Change of Name Act, 1986, S.O. 1986, c. 7 (partial implementation)</i></p> <p data-bbox="686 675 971 765"><i>Vital Statistics Amendment Act, 1986, S.O. 1986, c. 9 (partial implementation)</i></p>
Report on the Impact of Divorce on Existing Wills	1977	<p data-bbox="686 800 930 894"><i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i></p>
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981	<p data-bbox="686 928 945 1022"><i>Wages Amendment Act, 1983, S.O. 1983, c. 68 (partial implementation)</i></p> <p data-bbox="686 1057 945 1150"><i>Proceedings Against the Crown Amendment Act, 1983, S.O. 1983, c. 88</i></p> <p data-bbox="686 1185 930 1310"><i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 177 (partial implementation)</i></p> <p data-bbox="686 1345 956 1435">Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)</p>
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981	<p data-bbox="686 1470 956 1564">Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)</p>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Class Actions	1982	<i>Class Proceedings Act, 1992</i> , S.O. 1992, c. 6 (partial implementation)
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983	<i>Creditors' Relief Amendment Act, 1985</i> , S.O. 1985, c. 1 (partial implementation)
Report on Political Activity, Public Comment and Disclosure by Crown Employees	1986	<i>Public Service and Labour Relations Statute Law Amendment Act, 1993</i> , S.O. 1993, c. 38
Report on Compensation for Personal Injuries and Death	1987	<i>Courts of Justice Amendment Act, 1989</i> , S.O. 1989, c. 67 (partial implementation)
Report on Administration of Estates of Deceased Persons	1991	Rules of Civil Procedure, rr. 74 and 75, as en. by O. Reg. 484/94 (partial implementation)

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APPENDIX C

JUDICIAL AND ACADEMIC REFERENCES TO PUBLICATIONS OF THE ONTARIO LAW REFORM COMMISSION*

Report No. 1 [The Rule Against Perpetuities] (1965)

Edward Estate v. McBay, [1996] O.J. No. 3237
Sutherland Estate v. Dyer (1991), 4 O.R. (3d) 168, 82 D.L.R. (4th) 432
Re Tilbury West Public School Board and Hastie, [1966] 2 O.R. 20

Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]

Sutherland Estate v. Dyer (1991), 4 O.R. (3d) 168, 82 D.L.R. (4th) 432

Report No. 3 on Personal Property Security Legislation (1965)

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General of Nova Scotia* (1990), 96 N.S.R. (2d) 284, 69 D.L.R. (4th) 241

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APPENDIX D

ONTARIO LAW REFORM COMMISSION ADVISORY BOARD

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Court of Appeal for Ontario

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General Manager
Metro Toronto Housing Co. Ltd.

Mr. Justice Marvin Catzman
Court of Appeal for Ontario

Marshall Cohen
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Ontario Court of Justice
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Ontario Court of Justice
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APPENDIX E

OFFICERS (1964-1996)

ONTARIO LAW REFORM COMMISSION

CHAIRS

Honourable James C. McRuer, OC, LLD, DCL	July 1, 1964 - June 30, 1966
H. Allan Leal, OC, QC, LLM, LLD, DCL	July 1, 1966 - March 17, 1977
Derek Mendes da Costa, QC, SJD, LLD (now the Honourable Judge Mendes da Costa)	July 1, 1977 - June 20, 1984
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Rosalie S. Abella, BA, LLB (now the Honourable Madam Justice Abella)	March 20, 1989 - March 12, 1992
Richard E.B. Simeon, PhD (<i>Acting</i>)	May 1, 1992 - December 31, 1992
John D. McCamus, MA, LLB, LLM	February 12, 1993 - December 31, 1996

VICE CHAIRS

Honourable James C. McRuer, OC, LLD, DCL	July 1, 1966 - February 8, 1977
Honourable George A. Gale, CC, QC, LLD	March 1, 1977 - October 1, 1981
H. Allan Leal, OC, QC, LLM, LLD, DCL	October 1, 1981 - March 31, 1989
Richard E.B. Simeon, PhD	April 14, 1989 - April 13, 1992 and January 1, 1993 - April 13, 1995

COMMISSIONERS

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Honourable Richard A. Bell, PC, QC, LLD	November 12, 1964 - March 6, 1986
W. Gibson Gray, QC (now the Honourable Mr. Justice Gray)	November 12, 1964 - December 4, 1979
William R. Poole, QC	November 12, 1964 - March 6, 1986
Honourable George A. Gale, CC, QC, LLD	March 1, 1977 - October 1, 1981
Derek Mendes da Costa, QC, SJD, LLD (now the Honourable Judge Mendes da Costa)	July 1, 1977 - June 20, 1984
Barry A. Percival, Q.C.	January 23, 1980 - January 22, 1986
James R. Breithaupt, CStJ, CD, QC, MA, LLB	November 1, 1984 - March 20, 1989
Earl A. Cherniak, QC	March 6, 1986 - September 5, 1993
J. Robert S. Prichard, MBA, LLM	March 6, 1986 - July 31, 1990
Margaret A. Ross, BA (Hon), LLB	March 6, 1986 - December 5, 1993
Rosalie S. Abella, BA, LLB (now the Honourable Madam Justice Abella)	March 20, 1989 - March 12, 1992
Richard E.B. Simeon, PhD	April 14, 1989 - April 13, 1995
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Sanda Rodgers, BA, LLB, BCL, LLM	January 14, 1993 - January 13, 1996
The Honourable Judge Vibert Lampkin, LLB, LLM	June 24, 1993 - June 23, 1996

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William B. Common, QC, LLD	November 23, 1964 - May 31, 1967
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Lyle S. Fairbairn, BA, LLB	November 1, 1973 - July 30, 1976
M. Patricia Richardson, MA, LLB	December 1, 1976 - July 15, 1988
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Anne McGarrigle, LLB	December 15, 1986 - April 30, 1991
Mary Lasica, BAA	July 8, 1991 - December 31, 1996

APPENDIX F

PERMANENT STAFF (1964-1996) ONTARIO LAW REFORM COMMISSION

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(Formerly “Senior Legal Research Officers”)

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J.J. Morrison, BA (Hon), LLB, LLM	1994 - 1996

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(Formerly “Legal Research Officers”)

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Elizabeth A.M. MacNab, LLB	1970 - 1971
Keith B. Farquhar, LLM (Hon), LLM	1971 - 1973
John F. Layton, MA, LLB	1972 - 1973
M.A. Springman, MA, Msc, LLB	1974 - 1980
M. Patricia Richardson, MA, LLB	1974 - 1976
C.H. MacLean, BA, LLB	1974 - 1975
R.S.G. Chester, BA (Hons. Juris.)	1974 - 1977
Catherine G. Wolhowe, BA, JD	1975 - 1977
Martha Trofimenko, LLM	1977
Jennifer K. Bankier, BA, LLB	1977 - 1979
William A. Bogart, BA, LLB	1977 - 1979
M.E.B. Salter, BA, LLB	1978
Eric Gertner, LLB, BCL (Oxon)	1978 - 1983
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Lawrence M. Fox, LLB	1979 - 1988
Pamela M. Gibson, BA, LLB	1980 - 1983
Marilyn R. Leitman, BA, LLM	1984 - 1987
Judith A. Bellis, BA, LLB	1985 - 1991

J.J. Morrison, BA (Hon), LLB, LLM	1986 - 1994
Carolyn R. Hill, BA (Hon), LLB, LLM	1987 - 1988
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Peter M. Sibenik, MA, LLB	1988 - 1989
Ronda F. Bessner, BA (Hon), BCL, LLB, LLM	1989 - 1992
Christine B. Henderson, BA, LLB	1989 - 1996
Lisa Brownstone, BA, LLB, LLM	1991 - 1992
Mordechai Ben-Dat, BA, LLB	1991 - 1992
Donald F. Bur, LLB, LLM, BCL, PhD	1992 - 1996
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Barbara J. Hendrickson, MA, LLB, LLM	1993 - 1996
Howard Goldstein, BA (Hon), MES, LLB, LLM	1994 - 1996

ADMINISTRATIVE ASSISTANTS

A.E. Harrower	1974 - 1977
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Beverley G. Woodley	1982 - 1991
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SECRETARIES TO GENERAL COUNSEL AND DIRECTORS OF RESEARCH

L.G. Levack	1965 - 1967
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D.M. Halyburton	1972 - 1993

SECRETARIES TO ADMINISTRATIVE OFFICERS

E.A. Wolaniuk	1972 - 1974
M.E. Llewellyn	1974 - 1976
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SECRETARIES TO COUNSEL

F. Finnegan	1971 - 1973
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